

SUBCONTRACT

between

McNab Developments (Qld) Pty Ltd
Contractor

and

AR Coastal Scaffolding Pty Ltd
Subcontractor

for

22066 - Rockpool RAC Pelican Waters
Project

FORMAL INSTRUMENT OF AGREEMENT

THIS INSTRUMENT OF AGREEMENT is made the 01 day of August 2022

BETWEEN

THE CONTRACTOR:

McNab Developments (Qld) Pty Ltd
Level 1, 12 Neil Street
TOOWOOMBA QLD 4350

ABN : 63 118 748 548
ACN : 118 748 548
QBCC Licence No: 1094350
("Contractor")

AND:

THE SUBCONTRACTOR:

AR Coastal Scaffolding Pty Ltd
17 Alfriston Drive
Buderim, QLD 4556

ABN: 66 602 355 304
ACN: 602 355 304
QBCC Licence No:
("Subcontractor")

RECITALS

- A. Pursuant to a contract between McNab Developments (QLD) Pty Ltd as Contractor and Rockpool RAC (Pelican Waters) Pty Ltd as Principal, the Contractor is undertaking the design and construction of a 150 bed residential aged care facility for the Principal at Lot 90 on SP316217 Spitfire Banks Drive, Pelican Waters ("the head contract").
- B. The Subcontractor has represented to the Contractor it is experienced in the performance of work similar to the Subcontract Work as outlined in the subcontract documents and that it will provide the necessary resources, personnel, skill and expertise required to comply with all of its obligations under the subcontract.
- C. The Contractor wishes to engage the Subcontractor to perform the Subcontract Work as outlined in the subcontract documents and the Subcontractor has agreed to accept that appointment on the terms contained in this Formal Instrument of Agreement.

AGREEMENT

THE PARTIES AGREE THAT:-

1. Subcontract and Subcontract Documents

- 1.1 The Contractor and the Subcontractor acknowledge and agree they have contracted as contractor and subcontractor respectively to perform the Works in terms of the following documents which comprise the subcontract between the Contractor and the Subcontractor ("the subcontract").
- a) This Formal Instrument of Agreement; and
 - b) The attached General Conditions of Subcontract thereof and the following Annexures:
 - (i) Annexure 1 - Scope of Works
 - (ii) Annexure 2 - Specifications
 - (iii) Annexure 3 - Drawings
 - (iv) Annexure 4 - Subcontractor Health, Safety & Environmental Requirements
 - (v) Annexure 5 - Trade Pre-commencement Meeting (HSE Expectations)
 - (vi) Annexure 6 - Tender Qualification Minutes
 - (vii) Annexure 7 - Subcontract Programme
 - (viii) Annexure 8 - Project Trust Account Information
- 1.2 The Contractor and the Subcontractor further acknowledge and agree that the Contractor is bound by the provisions of its head contract with the Principal and that the head contract documents also form part of the subcontract between the Contractor and the Subcontractor.
- 1.3 The Contractor and the Subcontractor acknowledge and agree that should any ambiguity, discrepancy or inconsistency occur between the documents listed in clause 1.1 and clause 1.2 of this Formal Instrument of Agreement, the ambiguity, discrepancy or inconsistency shall be resolved as outlined in clause 6 of this Formal Instrument of Agreement.
- 1.4 Further, the Contractor and the Subcontractor acknowledge and agree the intent of the subcontract documents is for the Contractor to contract with the Subcontractor replicating as a minimum the Contractor's obligations to the Principal under the head contract with the Subcontractor's obligations to the Contractor under the subcontract.

2. The Subcontract Sum

- 2.1 The Subcontractor must carry out the Work in accordance with the subcontract for the fixed lump sum of **\$498,308.40 - Four Hundred and Ninety Eight Thousand, Three Hundred and Eight Dollars and Forty Cents** (which excludes GST).

3. Subcontractor's Acknowledgement

The Subcontractor acknowledges that:

- 3.1 It has not relied on any information by the Contractor which does not form part of the subcontract documents;

- 3.2 Any information documents provided by the Contractor to the Subcontractor do not form part of the subcontract documents;
- 3.3 It has had the opportunity to negotiate the terms of the subcontract documents on an arm's length basis and include any necessary special conditions in order to vary any of the above terms and/or conditions; and
- 3.4 Where applicable, it has been informed prior to entering into the subcontract that project bank accounts will be used.

4. Entire Agreement

The subcontract:

- 4.1 Contains the entire agreement and understanding between the parties on everything connected with the subject matter of the subcontract and supersedes any prior agreement, understanding, correspondence, documentation or discussion on anything connected with that subject matter.
- 4.2 The parties acknowledge they have not relied on any representation (other than those contained in the subcontract) to induce them to enter the subcontract, and any such representations are expressly superseded by the subcontract.
- 4.3 The subcontract may only be varied, supplemented, replaced or novated by written instrument executed by both parties.

5. Interpretation

Words and expressions contained in this Formal Instrument of Agreement which are defined in the attached General Conditions of Subcontract shall in this Formal Instrument of Agreement have the same meaning ascribed to them.

6. Order of Precedence

In case of an ambiguity, discrepancy or inconsistency between the subcontract documents the ambiguity, discrepancy or inconsistency is to be resolved in accordance with clause 6 of the General Conditions of Subcontract.

EXECUTED AS AN AGREEMENT

EXECUTED by

McNab Developments (Qld) Pty Ltd
ABN 63 118 748 548

by its duly authorised representative in the presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness (print)

.....
Name of authorised representative (print)

EXECUTED by

AR Coastal Scaffolding Pty Ltd
ABN 66 602 355 304

by its duly authorised representative in the presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness (print)

.....
Name of authorised representative (print)

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GENERAL CONDITIONS OF SUBCONTRACT

1. Applicable Law

The Subcontract shall be governed by and construed in accordance with the laws for the time being in force in the State specified in The Schedule.

2. Scope of Subcontract Works

- (a) The Subcontractor shall carry out and complete the Subcontract Works in accordance with the Subcontract and directions authorised by the Subcontract.

Subject to compliance by the Subcontractor with its obligations under the Subcontract, the Contractor shall pay the Subcontractor:

- (i) for work for which the Contractor accepted a lump sum, the lump sum; and
- (ii) for work for which the Contractor accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Subcontract by the rate accepted by the Contractor for the section or item,

adjusted by any additions or deductions made pursuant to the Subcontract.

- (b) Without limiting the generality of 2(a), the Subcontractor warrants to the Contractor that:

- (i) the Subcontractor:
 - A. at all times shall be suitably qualified, licensed, competent and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of the Subcontract Works;
 - B. has examined any preliminary design included in the Contractor's project requirements and that such preliminary design is suitable, appropriate and adequate for the purpose stated in the Contractor's project requirements;
 - C. shall carry out and complete the Subcontractor's design obligations to accord with the Contractor's project requirements and, if subclause 9(d) applies, accept the novation and retain the Contractor's consultant for any work the subject of a prior contract with the Contractor;
 - D. shall carry out and complete the Subcontract Works in accordance with the design Documents so that the Subcontract Works, when completed, shall:
 - 1. be fit for their stated purpose; and
 - 2. comply with all the requirements of the Subcontract;
 - E. has considered the carrying out of work under the Subcontract and the carrying out of the work under the Subcontract, including all methods of work as contemplated by the Subcontract, is practical and possible;
 - F. has considered the work under the Subcontract and the work under the Subcontract is capable of being built as described in the Subcontract;
 - G. has accepted responsibility for overcoming any issues relating to methods of work or similar matters an experienced and competent Subcontractor ought reasonably to have anticipated;
 - H. has all necessary resources available, including financial resources and access to labour and materials, to undertake the obligations under the Subcontract;
 - I. is satisfied that the provisions of the Subcontract are consistent and not conflicting;
 - J. has made all reasonable enquiries and obtained all information relevant to the risks, contingencies and other circumstances affecting the obligations under the Subcontract;
 - K. has satisfied itself as to the correctness and adequacy of the Subcontract Sum for the performance of its obligations under the Subcontract;
 - L. has accepted the risk of all hazards and difficulties including those related to logistics, materials handling and deliveries, traffic, adjacent properties, Site Safety and public safety.

- (ii) subject to clause 9, the Subcontractor's consultants identified in the Subcontractor's tender are suitably qualified and experienced.

- (c) The warranties remain unaffected notwithstanding:
 - (i) that design work (including preliminary design) has been carried out by or on behalf of the Contractor and included in the Contractor's project requirements;
 - (ii) that the Subcontractor has entered into a novation of any prior contract between the Contractor and a Contractor's consultant under subclause 9(d) and thereafter has retained that consultant in connection with the Subcontract Works;
 - (iii) any receipt or review of, or comment or Direction on, the design Documents by the Contractor; or
 - (iv) any variation.
- (d) The Subcontractor acknowledges that:
 - (i) The Subcontractor must allow at its own cost and execute the work:
 - A. including for minor items not expressly mentioned in the Subcontract Documents but which are necessary or incidental to the performance of the Subcontractor's obligations under the Subcontract and proper execution and completion of the Subcontract Works; and
 - B. make allowance for slight variations in dimensions shown on drawings which may be caused by unavoidable inequalities in the size of materials.

The Subcontractor acknowledges that the Contractor has entered into this Subcontract in reliance on the representations and warranties given in this Clause 2.

2A. Design and Documentation

If required by Item 21 of The Schedule, the provisions of this clause 2A shall apply to the Subcontractor.

- (a) In this clause:

'Contractor's Project Requirements' has the meaning stated in Item 22 of The Schedule;

"Design Documents" mean the drawings, specifications and other information, samples, models, patterns and the like required by the Subcontract and created (and including, where the context so requires, those to be created by the Subcontractor) for the construction of the Subcontract Works;

'Preliminary Design' means the documents stated in Item 22 of The Schedule which contain a preliminary design;

'Subcontractor's Design Obligations' means all tasks necessary to design and specify the Subcontract Works required by the Subcontract, including preparation of the Design Documents and, if the documents stated in Item 22 of The Schedule as describing the contractor's project requirements include a preliminary design, developing the preliminary design.

Design and Documentation Management

- (b) The Subcontractor:
 - (i) shall carry out and complete the Subcontractor's Design Obligations to accord with the Contractor's Project Requirements;
 - (ii) shall, as between the Subcontractor and the Contractor, be solely responsible for and assume all risk in relation to the design of the whole of the Subcontract Works, including the Preliminary Design and for any further design work, delays, cost increases, losses and expenses caused by or resulting from any deficiencies in the design;
 - (iii) is responsible for and bears all risk in connection with both the design and construction of the Subcontract Works, including the responsibility for the co-ordination, management and interface of the processes necessary to complete the design and construction of the Subcontract Works in accordance with the Subcontract and overcoming any buildability or constructability issues;

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- (iv) shall carry out and complete the Subcontract Works in accordance with the Design Documents so that the Subcontract Works, when completed, shall
 - (A) be fit for purpose;
 - (B) be fit for the purpose stated in the documents in item 22 of The Schedule; and
 - (v) comply with all the requirements of the Subcontract and all Legislative Requirements
- (c) The Subcontractor's Design Obligations are as follows:
- (i) the Subcontractor shall determine what is required for the completion of the design in accordance with the Subcontract and the Contractor's Project Requirements;
 - (ii) the Subcontractor shall procure (where in its opinion it is required):
 - (A) the completion of the design and documentation of the Subcontract Works; and
 - (B) the production of the Design Documents,
 as shall be necessary to enable the Subcontract Works to be properly executed and completed in accordance with the program, the Contractor's work schedule and the Contractor's Project Requirements;
 - (iii) the Subcontractor shall procure the preparation of all detailed design development work necessary for the completion of the Subcontract Works in accordance with the Contractor's work schedule and in accordance with sound engineering and best building practice;
 - (iv) the Subcontractor shall advise the Contractor in respect of any potential change in the Subcontract Works which may benefit the Contractor;
 - (v) the Subcontractor shall make recommendations to the Contractor in respect of any revision to the Preliminary Design or the Design Documents as may be necessary to develop and document the design of the Subcontract Works and to facilitate the timely completion of the Subcontract Works and shall procure the carrying out of any revisions required by the Contractor;
 - (vi) the Subcontractor shall ensure that the design and construction of the Subcontract Works conforms with all Legislative Requirements and the requirements of any authorities having jurisdiction over the Subcontract Works (including any requirements of the relevant building surveyor and the planning permit);
 - (vii) the Subcontractor warrants that the Design Documents will be prepared with all care and skill to be expected from an experienced professional with the requisite qualifications;
 - (viii) the Subcontractor shall ensure that the design and construction of the Subcontract Works complies with the requirements of the Head Contract;
 - (ix) the Subcontractor acknowledges and agrees that acceptance or approval by the Contractor of the Preliminary Design or the Design Documents do not reduce or in any way lessen the obligations of the Subcontractor under the Subcontract and is not an acknowledgment by the Contractor under that the same complies with the warranties given under the Subcontract;
 - (x) the Subcontractor shall not make any changes or amendments to any documentation prepared under the Subcontract other than a change which is reasonably contemplated under the Subcontract as part of the process of design development without the prior written approval of the Contractor;
 - (xi) the Subcontractor warrants that the design, design development and documentation will proceed in a reasonable manner and in accordance with all suitable methods and practices and the reasonable requirements of the Contractor; and
 - (xii) where changes to the Preliminary Design occur, the Subcontractor is required to obtain amendments to the building permits provided by the Contractor, as necessary and appropriate.

Design obligations part of the Subcontract Works

- (d) The Subcontractor is not entitled to, and shall not claim, any EOT or any additional payment, damages or compensation in addition to the Subcontract Sum under the Subcontract or otherwise at law in respect of:
 - (i) compliance with the Subcontractor's obligations set out in this clause 2A; or
 - (ii) an anomaly within or between any of the following:
 - (A) the documents constituting the Preliminary Design;
 - (B) the documents constituting the Contractor's Project Requirements; or
 - (C) the documents comprising this Subcontract.

- (e) A direction by the Contractor to vary anything in the Design Documents shall be a variation only to the extent that the Design Documents, before such variation, complied, or would have complied, with the Contractor's Project Requirements.

Design development obligations

- (f) The Subcontractor shall (if it considers that this is necessary to meet its obligations under the Subcontract):
 - (i) develop the Preliminary Design;
 - (ii) submit 3 copies (or electronic copy format) of the Design Documents to the Contractor in a timely way which enables the Contractor to ascertain whether the Design Documents are in accordance with this clause 2A and so that the review and the Design Documents will not delay the Subcontract Works or the Contractor's work schedule;
 - (iii) at its own cost upon request by the Contractor explain any Design Documents, or report on any matters as the Contractor may from time to time reasonably request; and
 - (iv) ensure that the Contractor's Project Requirements are met by the Design Documents and the Subcontract Works.

Contractor's acceptance of Design Documents

- (g) The Contractor shall review the Design Documents submitted by the Subcontractor under this clause and issue a notice to the Subcontractor that the Design Documents are acceptable.
- (h) If the Design Documents are not acceptable, the Contractor shall advise the Subcontractor of this within 10 Business Days of receipt by issuing an instruction specifying the respects in which the Design Documents are not acceptable or whether further information is required before the Design Documents can be accepted.
- (i) The Subcontractor acknowledges and agrees that:
 - (i) in reviewing the Design Documents under this clause, the Contractor is only checking the architectural or appearance aspect and is not checking or confirming the technical detail or performance criteria;
 - (ii) the Contractor does not assume or owe any duty of care to the Subcontractor to review, or in reviewing, the Design Documents for errors, omissions, discrepancies or compliance with the Subcontract;
 - (iii) nothing herein will relieve the Subcontractor from, or alter or affect, the Subcontractor's liabilities or responsibilities whether under the Subcontract or otherwise according to law or prejudice the Contractor's rights against the Subcontractor whether under the Subcontract or otherwise according to law.

Further information

- (j) The Subcontractor shall provide any information sought by the Contractor under this clause as soon as possible and resubmit the Design Documents to the Contractor.

Contractor shall resubmit

- (k) The Subcontractor shall continue to submit Design Documents under this clause until they are accepted by the Contractor.

Insurance

- (l) In addition to the Subcontractor's obligation to take out and maintain professional indemnity insurance pursuant to clause 37(a)(iv), the Subcontractor shall ensure that every consultant shall effect and maintain professional indemnity insurance with levels of cover not less than that stated in Item 18 of The Schedule. Each such consultant's professional indemnity insurance shall be maintained until Subcontractor Completion and thereafter for a period of six years.

3. Head Contract

- (a) The Subcontractor acknowledges and agrees that:
 - (i) the Head Contract was, and is, available for inspection and review at the head office of the Contractor; and
 - (ii) it has informed itself as to all Documents, obligations, liabilities and terms contained in the Head Contract.
- (b) The Subcontractor agrees to assume to the Contractor (as a minimum) the same obligations as the Contractor has assumed to the Principal under the Head Contract in respect of the Subcontract Works and agrees to perform and discharge each of the Contractor's obligations under or associated with the Head Contract in respect of the Subcontract Works as part of this Subcontract. Where the Head Contract imposes an obligation that is inconsistent with an obligation under this Subcontract, the obligation under the Head Contract shall be considered the minimum standard required to the extent of the inconsistency.
- (c) Without limitation to clause 3(b) or any other provision of this Subcontract, the Subcontractor must:
 - (i) provide notice to the Contractor of any claims for variations, extension of time and adjustments of the Subcontract Sum in accordance with the Subcontract and in sufficient detail to allow the Contractor to comply with any requisite provisions of the Head Contract; and
 - (ii) assume the same responsibility as the Contractor has assumed to the Principal in respect of any design, carrying out, completion, standard and quality of the Subcontract Works.
- (d) All the powers of the Principal, the Principal's Representative or the Superintendent as against the Contractor under the Head Contract extend to this Subcontract and may be exercised by the Contractor as against the Subcontractor under this Subcontract.
- (e) The Subcontractor continually indemnifies the Contractor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing, or payment (including legal costs on a full indemnity basis) which the Contractor pays, suffers, incurs or is liable for either directly or indirectly arising out of or in connection with a breach of the Subcontractor's obligations under this clause.

4. Contact With Others

The Subcontractor is expressly forbidden to directly approach the Principal or Superintendent, or the Principal's consultants or agents in connection with any matter concerning the Subcontract Works without prior consent from the Contractor.

5. Quality Assurance

The Subcontractor shall be responsible for providing Quality Assurance to meet the requirements of the Head Contract and the Contractor's specific requirements.

6. Subcontract Documents

- (a) The Subcontract Documents shall be read as complementary Documents and anything required by or contained in one but not another shall be equally binding as if required by or contained in all of them. The Subcontract Documents are identified in Item 3 of the Schedule.
- (b) If the Subcontractor finds any ambiguity, discrepancy, inconsistency, omission or error in the Subcontract Documents (an "anomaly") it must immediately advise the Contractor in writing about the anomaly and the Contractor shall direct the Subcontractor as to the interpretation to be followed. No such Direction shall be considered as a variation to the Subcontract Works or be reason for adjustment of the Subcontract Sum unless the Subcontractor is directed by the Contractor as a variation under clause 24.
- (c) The Subcontractor warrants that it has examined all Documents comprising the Subcontract prior to the date of entering into the Subcontract and that there are no anomalies in or between the Documents comprising the Subcontract.

- (d) Unless the Contractor directs otherwise, the following rules will apply to the interpretation of any anomaly which may arise in or between the Documents comprising the Subcontract in relation to a requirement in respect of the extent of the Subcontractor's obligations, or the quality, quantity or cost of the Subcontract Works:
 - (i) the obligation which is most onerous upon the Subcontractor applies;
 - (ii) the highest quality or standard for product, workmanship or finish applies;
 - (iii) the greatest quantity applies; or
 - (iv) the highest cost to the Subcontractor applies.
- (e) Where any discrepancy exists:
 - (i) between figured and scaled dimensions the figured dimensions shall prevail; and
 - (ii) drawings made to larger scales and/or showing details of particular parts of any work shall be taken as correct in preference to those made to smaller scales and for more general purposes.
- (f) If the Subcontractor makes a written request for additional drawings and/or any other written information from the Contractor ("additional details") necessary for the purpose of executing the Subcontract Works then the additional details supplied to the Subcontractor by the Contractor will be deemed to be part of the original Subcontract Documents.
- (g) All Documents supplied to the Subcontractor by the Contractor for the purpose of executing the Subcontract Works shall be returned to the Contractor on demand in writing and shall not be used by the Subcontractor for any purpose other than execution of the Subcontract Works.
- (h) If the Subcontract requires the Subcontractor to provide drawings and other written information (the "Subcontractor details") then the Subcontractor must supply (free of charge) five copies of the Subcontractor details to the Contractor for approval, or copies in the format authorised or directed by the Contractor (which may include electronic format if applicable).
- (i) If the Contractor considers that such Subcontractor details are suitable for use the Subcontractor shall be given permission to use them and the Subcontractor's copies shall be returned to it. The copies supplied for the Contractor shall remain its property. The Documents depicting the Subcontract details do not form part of the Subcontract Documents.
- (j) Notwithstanding the grant of permission to use the Subcontractor details the Subcontractor shall be bound to carry out and complete the Subcontract Works strictly in accordance with Subcontract Documents. Permission for the use of the Subcontractor details shall not relieve the Subcontractor from the full responsibility for their correctness except in so far as any error in or omission from the Subcontractor details has been caused by an error in or omission from any document which the Contractor has issued independently for the purposes of this Subcontract.
- (k) During the execution of the Subcontract Works one complete set of drawings specifications and other written information issued or supplied to or by the Subcontractor shall be kept by the Subcontractor at the site or other location approved in writing by the Contractor and shall be available at all reasonable times for reference by the Contractor and any person or persons nominated by the Contractor.
- (l) The Subcontractor's quotation or tender qualification/exclusions letter or similar is not a Subcontract document unless expressly stated otherwise in the Formal Instrument of Agreement.

7. Evidence of Agreement/Documents

- (a) The execution of the Formal Instrument of Agreement ("FIA") by the parties is a condition precedent to any payment by the Contractor to the Subcontractor under the Subcontract or otherwise at law relating to the Subcontract Works.
- (b) The parties must take all reasonable steps to ensure that the FIA is executed before commencement of the Subcontract Works.
- (c) The Subcontractor acknowledges that:
 - (i) this Subcontract contains the entire understanding of the parties with respect to the subject matter of the Subcontract and the Subcontract Works; and
 - (ii) it has not relied on any representations by the Contractor, or any other person, other than those contained in the Subcontract.

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8. Bills of Quantities/Schedule of Quantities

Where bills of quantities or schedule of quantities are provided by the Contractor to the Subcontractor these are provided as a guide only to the extent of the Subcontract Works and are not guaranteed correct and do not form part of the Subcontract Documents unless specified in Item 6A of The Schedule.

Unless expressly stated otherwise any bills of quantities or schedule of quantities are for reference purposes only and shall not entitle the Subcontractor to any adjustment to the contract sum by virtue of any difference between stated and actual quantities.

9. Assignment and Subcontracting

(a) The Subcontractor shall not assign, mortgage, charge, encumber or sub-let any portion of the Subcontract Works under the Subcontract without the prior written consent of the Contractor. Failure to obtain such written consent shall have the effect of any such assignment, mortgage, charge, encumbrance or sub-lease being void.

(b) The Subcontractor shall engage and retain the consultants identified in the Subcontractor's tender.

The Subcontractor shall not without the Contractor's prior written approval (which shall not be unreasonably withheld):

- (i) subcontract or allow a sub-subcontractor to subcontract any of the Subcontract Works; or.
- (ii) allow a sub-subcontractor to assign a sub-subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the Subcontractor shall give the Contractor written particulars of the work to be subcontracted and the name and address of the proposed sub-subcontractor. The Subcontractor shall give the Contractor other information which the Contractor reasonably requests, including the proposed sub-subcontract documents without prices.

Within 21 Days of the Subcontractor's request for approval, the Contractor shall give the Subcontractor written notice of approval or of the reasons why approval is not given. If no approval is given, the request will be deemed to be approved.

(c) If the Contractor has included in the tender a list of one or more selected sub-subcontractors or particular work, the Subcontractor shall subcontract that work to a selected sub-subcontractor and thereupon give the Contractor written notice of that selected sub-subcontractor's name.

If no Subcontractor on the Contractor's list will subcontract to carry out the selected sub-subcontract work, the Subcontractor shall provide a list for the written approval of the Contractor.

(d) This subclause applies only where the Contractor's project requirements include a preliminary design or the Subcontract includes selected sub-subcontract work.

When directed by the Contractor, the Subcontractor, without being entitled to compensation, shall promptly execute a deed of novation in the format provided by the Contractor, such deed being between the Contractor, the Subcontractor and the sub-subcontractor or selected sub-subcontractor for the particular part of the preliminary design or selected sub-subcontract work.

(e) Except where the Subcontract otherwise provides, the Subcontractor shall be liable to the Contractor for the acts, defaults and omissions of sub-subcontractors (including selected sub-subcontractors) and employees and agents of sub-subcontractors or any other consultants engaged by, for or on behalf of the Subcontractor in connection with the Subcontract Works as if they were those of the Subcontractor. Approval to subcontract shall not relieve the Subcontractor from any liability or obligation under the Subcontract.

(f) The Subcontractor continually indemnifies the Contractor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing, or payment (including legal costs on a full indemnity basis) which the Contractor pays, suffers, incurs or is liable for either directly or indirectly arising out of or in connection with the Subcontractor's sub-subcontractors.

10. Guarantees/Warranties

- (a) The Subcontractor shall perform all work in accordance with specified or Contractor approved alternative product manufacturers' requirements in order to obtain full warranty as nominated in the Subcontract Documents.
- (b) The Subcontractor shall immediately on demand provide in favour of the Contractor such guarantees or warranties (including in the form of any Deed required by the Head Contract) as are specified in the Head Contract or Subcontract in respect of the Subcontract Works or which are ordinary provided for works of the same nature as the Subcontract Works and shall ensure that the Principal shall have the benefit of any guarantee/warranties and be able to enforce the guarantee/warranties directly against the party giving them.
- (c) The Subcontractor shall be liable for and must indemnify the Contractor against all loss and damage suffered or incurred by the Contractor as a result of any breach of clause 10(a) or (b) by the Subcontractor (including legal costs on a full indemnity basis) or as a result of the Principal being unable or unwilling to enforce any guarantee/warranty directly against the Subcontractor or the party giving the guarantee/warranty.
- (d) The Subcontractor acknowledges that damages are not an adequate remedy for failing to provide guarantees or warranties in accordance with clause 10(a) or 10(b).

11. Shop Drawings and Site Dimensions

- (a) The Subcontractor shall be responsible for and shall verify all sizes, dimensions, set out and details on the site to its own satisfaction. Any dimensions or details issued by the Contractor or by the Principal shall be deemed to be issued as a guide only.
- (b) The Subcontractor shall allow to coordinate with other related subcontractors in the development of shop drawings, including review and integration of other related Subcontractors shop drawings, design, sequence of works and attendance at coordination meetings as required by the Contractor.
- (c) The Subcontractor shall not make any Claim on the Contractor to cover any cost, loss, expenses or damages arising out of or in connection with the Subcontractor's failure to adequately check site measurements.
- (d) The Subcontractor shall be responsible for, and pay all costs involved in the preparation, amendment and review of all workshop drawings including penetration drawings where required. Although shop drawings may be reviewed by the Contractor such review shall not render the Contractor liable for any errors or omissions in such drawings and the Subcontractor remains entirely responsible for the completion of the Subcontract Works.

12. Subcontractor to Inform Itself

- (a) The Subcontractor warrants that:
 - (i) it has examined all the site information;
 - (ii) it has examined all the information which is relevant to the risks, contingencies and other circumstances relevant to the execution of the Subcontract Works pursuant to this Subcontract;
 - (iii) it has informed itself of the nature of the work and materials necessary for the performance of the Subcontract Works, the means of access to, and the facilities for delivery to the site;
 - (iv) it has informed itself as to the availability of the labour and the industrial relations environment;
 - (v) the Contractor makes no warranties and gives no guarantees as to the sufficiency or accuracy of the site information;
 - (vi) the Subcontractor has had the opportunity to inspect and view the site and the site information and perform its own tests and make its own assessment of the risks associated with the site information and any latent condition;
 - (vii) the provision of the site information and anything contained in the site information shall not affect the assumption by the Subcontractor of the risk of latent conditions under the next clause; and

- (viii) the provision of the site information shall not give rise to any Claim on the part of the Subcontractor (even if the site information is or process to be inaccurate, incomplete or inadequate for any reason);
- (ix) it has obtained all necessary professional advice and assistance in relation to the execution of the Subcontract Works,
prior to the execution of this Subcontract or submission of its tender in relation thereto and that it has satisfied itself as to the correctness and adequacy of the Subcontract Sum for the performance of its obligations under the Subcontract.
- (b) Failure by the Subcontractor to do all or any of the things it has warranted to have done under this clause will not relieve the Subcontractor of the liability to complete the Subcontract Works in accordance with the Subcontract.
- (c) The Subcontractor warrants and represents that it has not relied upon any Documents or information supplied by the Contractor, including the site information, in entering into the Subcontract and accepts all risks associated with any inadequacy, error or inaccuracy in the site information.
- (d) In no circumstances whatsoever does the Contractor take responsibility for nor make any representation with respect to the accuracy or adequacy of any information or data provided to the Subcontractor, whether contained in the Subcontract Documents or otherwise; nor shall the Contractor be liable, whether in contract or tort for negligent misrepresentation or misinformation or otherwise; nor does the Contractor assume any duty of care to the Subcontractor with respect to information pertaining to the Subcontract Works, or the failure to provide such information.

13. Latent Conditions

Alternative 1:

- (a) The Subcontractor agrees:
 - (i) to notify the Contractor immediately upon becoming aware (and where possible before the latent condition is disturbed), or when it reasonably should have become aware, of a latent condition. For clarity, notification by the Subcontractor must be within two (2) Business Days of becoming aware, or when it should reasonably have become aware, of the latent condition. Failure to do so will be taken to be a material breach for the purposes of clause 53(a);
 - (ii) to assume the risk of a latent condition; and
 - (iii) to perform all work and provide all materials necessary to overcome any latent conditions at its own cost so that the Subcontract Works are completed for the Subcontract Sum and without any delay.
- (b) The Subcontractor shall have no Claim against the Contractor arising from the existence of any latent condition.

Alternative 2:

- (a) The Subcontractor agrees:
 - (i) to notify the Contractor immediately upon becoming aware (and where possible before the latent condition is disturbed), or when it reasonably should have become aware, of a latent condition. For clarity, notification by the Subcontractor must be within two (2) Business Days of becoming aware, or when it should reasonably have become aware, of the latent condition. Failure to do so will be taken to be a material breach for the purposes of clause 53(a); and
 - (ii) to perform all work and provide all materials necessary to overcome any latent conditions so that the Subcontract Works are completed in accordance with the Subcontract.
- (b) Within 3 Business Days of the notice referred to above, the Subcontractor shall give the Contractor a written statement of:
 - (i) the latent condition encountered and the respects in which it differs materially;
 - (ii) the additional work, resources, time and cost which the Subcontractor estimates to be necessary to deal with the latent condition; and
 - (iii) other details reasonably required by the Superintendent.

Initial	
Initial	

- (c) Subject to the Subcontractor's compliance with clause 13, the effect of the latent condition shall be a deemed variation, priced having no regard to additional cost incurred more than 5 Business Days before the date on which the Subcontractor gave the notice required by the first paragraph of clause 13.
- (d) The Subcontractor shall have no claim under the Contract or otherwise at law in respect of latent conditions unless the Subcontractor gives to the Contractor the notice and written statement required by this clause 13 within the times specified in this clause 13. The Subcontractor's entitlement in respect of any claim for a latent condition shall be limited to the Contractor's award in respect of the same latent condition under the Head Contract.

14. Statutory and Legislative Requirements

- (a) The Subcontractor shall carry out and complete the Subcontract Works in accordance with the requirements of all appropriate statutory authorities and all statutory requirements including the payment of all necessary fees and the obtaining of all necessary consents, approvals and certificates. The Subcontractor shall before commencing any part of the Subcontract Works produce to the Contractor all such consents, approvals and certificates.
- (b) The Subcontractor shall comply with the requirements of the *Environmental Protection Act 1994* (Qld), subordinate legislation and the conditions of the project Environmental Plan or similar (where applicable).
- (c) The Subcontractor shall satisfy all legislative requirements required to be complied with under the Head Contract, and as required by the extent of the Subcontract Works, and comply with the requirements of the *Building Act 1975* (Qld) and all subordinate legislation to the full extent, which includes the National Code of Compliance suite.
- (d) The Subcontractor, upon finding that a legislative requirement is at variance with the Subcontract Works documents, shall promptly give the Contractor notice thereof.
- (e) If a legislative requirement:
 - (i) necessitates a change:
 - A. to the Head Contract Works;
 - B. to the Subcontract Works;
 - C. being the provision of services by a municipal, public, or other statutory authority in connection with the Subcontract Works; or
 - D. in a fee or charge or payment of a new fee or charge;
 - (ii) comes into effect after the date of the Subcontract and could not reasonably have been foreseen by an experienced and competent subcontractor at the date of Subcontract; and,
 - (iii) causes the Subcontractor to incur more or less cost than otherwise would have been incurred;

the difference shall entitle the Subcontractor to a Variation to the Subcontract works.
- (f) Notwithstanding that the Subcontractor may be entitled to a Variation pursuant to Clause 14(e), the Subcontractor must make any Claim in accordance with Clause 25. Notwithstanding any other provisions of the Subcontract, the Subcontractor shall not be entitled to any Variation described by this Clause unless it shall have complied with the required written notice periods of Clause 25.
- (g) Prior to the issue of the final certificate or upon demand in writing made by the Contractor to the Subcontractor, the Subcontractor shall surrender to the Contractor any Documents in its possession issued by or evidencing the approval of public, municipal or other authorities in connection with the Subcontract Works.
- (h) The Subcontractor shall be liable for, and must indemnify the Contractor against all loss and damage, including any penalty or fine or similar imposed by a statutory authority, as a result of any environmental damage to the site or the area surrounding the site or the breach of any statute or legislative requirement as a consequence of or in connection with the performance of the Subcontract Works.

14A Project Bank Account

- (a) The Subcontractor acknowledges that, by executing this Subcontract, it has been provided all relevant and required information under the Act from the Contractor regarding the Project Bank Account prior to entering into this Subcontract.

Information

- (b) The Subcontractor must:
- (i) provide the Contractor with all information it reasonably requires in order to administer the Project Bank Account within five (5) Business Days of the date of the Subcontract, or within five (5) Business Days from the date of execution of the Subcontract by the Subcontractor – whichever is earliest;
 - (ii) provide the Contractor with all assistance and information necessary to administer and operate the Project Bank Account during the time in which the Project Bank Account is active, including:
 - A. notifying the Contractor within three (3) Business Days of becoming aware of a change in information that may impact the Contractor's requirements under the Act;
 - B. providing all information or other matters requested by the Contractor in relation to the Project Bank Account within three (3) Business Days of receipt of a request from the Contractor in writing;
 - (iii) The Subcontractor indemnifies the Contractor against all damage, expense (including lawyers' fees and expenses on a solicitor/client basis), loss (including consequential, economic and pure economic loss) or liability of any nature suffered or incurred by the Contractor arising out of a failure by the Subcontractor to comply with its obligations under this clause 14A.

15. Subcontractor's Representative

- (a) The Subcontractor shall nominate to the Contractor in writing as the Subcontractor's representative a responsible person in its site organisation to whom the Contractor may give directions with regard to the Subcontract Works and who is in a position to make binding decisions for and on behalf of the Subcontractor. In lieu of a nomination by the Subcontractor, this person shall be the supervisor or foreman of the Subcontractor on site. Any such representative shall be capable of adequately communicating in English. The Subcontractor must ensure that at all times there is a Subcontractor's representative and any change of the Subcontractor's representative is notified to the Contractor in writing within two (2) Days.
- (b) Whether or not the Subcontractor has subcontracted, assigned or sublet the Subcontract Works or any portion thereof it shall not be relieved of responsibility under the Subcontract at all times.
- (c) The Subcontractor shall maintain throughout the duration of the Subcontract Works a competent supervising foreman and any directions given to that person by the Contractor shall be deemed to be given to the Subcontractor.
- (d) The Subcontractor shall ensure that the Subcontractor's representative or appropriate senior manager of the Subcontractor attends all meetings requested by the Contractor throughout the Subcontract Works.
- (e) If during the Subcontract Works the Contractor determines the Subcontractor's representative is unsuitable in performing the role then that person shall be removed from site and immediately replaced by a new Subcontractor's representative to the Contractor's satisfaction.

16. Control of Employees

- (a) The Subcontractor shall employ and ensure that its subcontractors employ in connection with the Subcontract Works only such persons as are careful, skilled and experienced in their respective trades and occupations.

- (b) The Contractor may object to and direct the Subcontractor to remove or have removed from the site within such time as the Contractor directs any person employed by the Subcontractor or by any of its subcontractors who, in the opinion of the Contractor misconducts themselves or is incompetent or negligent in the performance of their duties.
- (c) The Subcontractor shall comply with such Direction and any such person shall not be further employed in upon or about the site without the prior approval of the Contractor.
- (d) The Contractor shall not give any Direction pursuant to this clause which is unreasonable or vexatious.

17. Work Health and Safety

The Subcontractor:

- (a) shall observe and carry out their obligations under the provisions of all and any relevant legislative requirement governing safe working practices/conditions or under any safety work instruction issued by the Principal or Contractor from time to time;
- (b) must read and comply with the requirements of the Contractor's document "Subcontractor Health, Safety and Environmental Requirements" which forms **Annexure 4** of the Subcontract;
- (c) continually indemnifies the Contractor against any Claim, action, damage, loss, liability, cost, charge, expense, outgoing, or payment (including legal costs on a full indemnity basis) which the Contractor pays, suffers, incurs or is liable for either directly or indirectly arising out of or in connection with a breach of the Subcontractor's obligations under this clause, including any non-compliance with the Subcontractor's obligations under the "Subcontractor Health, Safety and Environmental Requirements";
- (d) acknowledges that the Contractor's document entitled "Construction Management Plan" and "Safe Work Method Statements" (or similar documents included in the Subcontract Documents) which is consistent with the requirements of the *Work Health and Safety Act 2011* (Qld), *Work Health and Safety Regulation 2011* (Qld), relevant Australian Standard or Code of Practice including any amendments or subsequent legislation thereto, shall form part of this Subcontract and must be strictly adhered to;
- (e) must submit their site specific Workplace Health and Safety Plan and Safe Work Method Statements, in accordance with the *Work Health and Safety Regulations 2011* (Qld), to the Contractor within 10 Business Days of award of the Subcontract or 10 Business Days prior to commencement on site by the Subcontractor whichever is the earlier. The Subcontractor will not be permitted to commence work activities on the project site until their submitted Safe Work Method Statements have been approved;
- (f) must re-submit their site specific Workplace Health and Safety Plan and Safe Work Method Statements until the Contractor approves same;
- (g) despite any other provision of this Subcontract, the Subcontractor shall have no entitlement to an extension of time in connection with delay that relates to the failure to have an approved Safe Work Method Statements, including where that delay relates to the Contractor processing and considering for approval the submitted (or re-submitted) Safe Work Method Statements; and
- (h) must submit, prior to commencing work activities on the project, site the following completed Documents:
 - (i) Electrical Equipment Register
 - (ii) Hazardous Chemicals Register
 - (iii) Safety Data Sheets
 - (iv) Employee Training and Qualification Register
 - (v) Registered Plant Register
 - (vi) Any other document reasonably requested by the Contractor

18. Responsibility for Subcontract Works

From the date of Subcontract until such a time as a Certificate of Subcontractor Completion has been issued by the Contractor, the Subcontractor shall protect and maintain at its own expense and be responsible for the care of all works under this Subcontract including:

- (a) all materials and plant which are the property of the Subcontractor or its servants or agents which are used or intended to be used for the purpose of carrying out work under the Subcontract;
- (b) all materials and plant entrusted to the Subcontractor or its servants or agents by the Contractor for the purpose of carrying out work under the Subcontract;
- (c) the protection, care, up-keep and maintenance of the Subcontract Works,

and if loss or damage occurs to the Subcontract Works while the Subcontractor is responsible for its protection and maintenance the Subcontractor shall at its own cost promptly make good the loss or damage.

19. Possession and Access

- (a) The Contractor shall give reasonable notice to the Subcontractor as to the date when the Subcontractor is required to commence the Subcontract Works and if it does not do so, the Subcontractor shall have possession of site from the date nominated in Item 12 of The Schedule and thereafter, the Subcontractor shall execute the Subcontract Works in accordance with the Contractor's directions and/or the Contractor's works schedule. If the Subcontractor fails to commence the Subcontract Works on the Date for Commencement as notified, or two Days from the date of giving such notice, whichever is the later, then the Subcontractor shall be liable for and shall pay or allow to the Contractor any loss, damage, cost or expense incurred by the Contractor by reason of such failure.

- (b) The Subcontractor shall at all reasonable times give to the Contractor and to any person authorised in writing by the Contractor access to the Subcontract Works and shall provide every reasonable facility necessary for the supervision, examination and/or testing of any works carried out or materials supplied pursuant to the Subcontract at the site or at any place where such work is being carried out or materials are being prepared or stored for the Subcontract Works.

The Subcontractor acknowledges that the Contractor and others will be carrying out other work on the site concurrently with the performance of the Subcontract Works and the Subcontractor shall coordinate the Subcontract Works with those concurrent works. The Subcontractor, in its capacity as a duly qualified, competent and experienced Subcontractor, shall fully cooperate and coordinate with the Contractor and other Subcontractors engaged by the Contractor and shall coordinate its own work with that being carried out by the Contractor, its Subcontractors' or other engaged in the construction of the project in such a manner as will mitigate any delays.

- (c) The Subcontractor agrees that it will not have sole or exclusive possession of any part of the Site.
- (d) The Subcontractor agrees that its access to those parts of the site reasonably necessary for the Subcontractor to comply with its obligations under the Subcontract may be:
 - (i) limited for any period of time;
 - (ii) non-continuous; or,
 - (iii) hindered by other works, including the work of other subcontractors.
- (e) The Subcontractor warrants that it has made due and sufficient allowance to absorb any delay resulting from restrictive access, and that there has been due and sufficient allowances in the Subcontract Sum to accommodate the restrictions, non-continuity or hindrances that may occur and the need to interface with the Contractor and other subcontractors.
- (f) The Subcontractor agrees that there will be no entitlement to make any claim arising out of or in connection with any restriction, non-continuity or hindrance of access to the site (or parts of the Site), and indemnifies the Contractor against any loss or damage arising out of or in connection with a breach by the Subcontractor of this clause.
- (g) Until access to the site or part of the site is given to the Subcontractor under this clause, the Subcontractor shall not deliver materials to or perform work on the site or any part of the site as the case may be, without written approval from the Contractor.
- (h) Unless the Subcontract otherwise provides or the Contractor gives prior written approval, the Subcontractor must not use the site or allow it to be used for any purpose not connected with the Subcontract Works.

- (i) The Subcontractor shall neither take or employ anyone to video or photograph the site or any part of the project without the prior written approval of the Contractor.
- (j) Any valuable minerals, fossils, articles, objects of antiquity, objects of anthropological or archaeological interest, coins or articles of value found on the site during the carrying out of the Subcontract Works shall be and remain the property of the Contractor and the Subcontractor immediately upon discovery shall notify the Contractor of such discovery and if so directed by the Contractor shall take precautions to prevent the loss, removal or damage to any such articles or property.

20. Setting Out

- (a) The Contractor shall supply the information necessary to enable the Subcontractor to set out the Subcontract Works and shall provide the Subcontractor with such survey marks as are specified in the Subcontract Documents, or if not so specified, with datum and bench marks on or adjacent to the Subcontract Works.
- (b) Subject to subclause 20(a) hereof, the Subcontractor shall at its own expense set out the Subcontract Works on the site correctly and in accordance with the Subcontract.
- (c) Except in so far as the work under the Subcontract requires anything to be covered or removed the Subcontractor shall preserve and maintain in their true positions all survey marks referred to in subclause 20(a) hereof or as may otherwise be established and brought to the Subcontractor's attention by the Contractor.
- (d) Should any survey mark be disturbed or obliterated, the Subcontractor shall immediately notify the Contractor and shall, unless the Contractor otherwise directs, rectify such disturbance or obliteration to the satisfaction of the Contractor at the Subcontractor's cost.
- (e) If at any time during the progress of the Subcontract Works any error is discovered in the position, level, dimension or alignment of any part, of the project (including the Subcontract Works) the Subcontractor shall immediately upon discovery of such error notify the Contractor and shall unless the Contractor otherwise directs, rectify the error. The Subcontractor shall bear the costs of rectification except when the error is not in the Subcontract Works or has been caused by incorrect data issued by the Contractor in which event the cost of rectification shall be borne by the Contractor.
- (f) The Contractor may check the setting out of work on the site by the Subcontractor but the fact that the Contractor has carried out such checks shall not relieve the Subcontractor of any responsibility for the correct setting out of the Subcontract Works.
- (g) The term 'survey mark' used in this clause means and refers to a survey peg, survey mark, bench mark, reference mark, level mark or any other mark used or intended to be used for the purpose of setting out, checking and measuring work under the Subcontract.

21. Acceptance of Previous Work

- (a) The Subcontractor shall not proceed to carry out any part of the Subcontract Works over other work if in the opinion of the Subcontractor the previous work is unsatisfactory or unsuitable unless the Contractor issues a written instruction overriding such objection and the Contractor accepts responsibility for such work proceeding.
- (b) Subject to clause 21(a) commencement of any work by the Subcontractor shall be conclusive evidence that the Subcontractor accepts the previous work and requires no extra payments or special recompense and such commencement shall render the Subcontractor liable for all costs, loss, expense or damage incurred by the Contractor in making good any resultant defects.

22. Materials

- (a) All materials, plant and equipment including scaffolding and site accommodation necessary for the performance of the Subcontract Works are to be supplied by the Subcontractor.
- (b) In the event of the Subcontractor or its employees, for the purposes of the performance of the Subcontract Works, being permitted to use any crange, scaffolding, hoist or other equipment belonging to or provided by the Contractor such use shall be on the express condition that no

warranty or other liability on the part of the Contractor or of its other Subcontractors shall be created or implied in regard to the fitness, availability, adequacy, condition or suitability of the said cranes, scaffolding, hoist or other equipment.

- (c) The Subcontractor is responsible for the protection and security of all materials, tools, equipment and goods and executed work including temporary coverings and the replacement of any protection or temporary coverings provided by others and removed by the Subcontractor to gain access or otherwise.
- (d) The Subcontractor will be responsible for the protection and care of any Contractor supplied materials for use by the Subcontractor (including materials first supplied to the Contractor by the Principal).
- (e) If any materials are supplied by the Contractor to the Subcontractor for the purposes of undertaking the Subcontract Works, the following must be provided by the Subcontractor in relation to any of those goods that are stored by the Subcontractor at any location other than the site, evidence that the goods:
 - (i) are insured;
 - (ii) have been properly stored and protected; and
 - (iii) have been clearly labelled the property of the Contractor.
- (f) The Subcontractor must take all precautions to minimise wastage of any Contractor or client supplied materials. Any excess wastage or breakages, damages or the like will be recovered by the Contractor as a debt due on the Subcontractors behalf

23. Examination and Testing

- (a) In this clause 'test' includes examine and measure. At any time prior to the making of a final payment by the Contractor to the Subcontractor, the Contractor may direct that any materials or work under this Subcontract be tested. The Subcontractor shall provide such assistance and samples and make accessible each part of the Subcontract Works as may be required. On completion of the tests the Subcontractor shall make good the Subcontract Works so that the Subcontract Works fully comply with this Subcontract.
- (b) The Contractor may direct that any part of the Subcontract Works shall not be covered up or made inaccessible without the Contractor's prior approval.
- (c) Tests shall be conducted as provided in the Subcontract or by the Contractor or a person (which may include the Subcontractor) nominated by the Contractor.
- (d) Before conducting a test under this Subcontract the Contractor or the Subcontractor shall give reasonable notice to the other of the time, date and place of the test.
- (e) Without prejudice to any other rights or remedies under this Subcontract, if the Subcontractor delays in conducting a test the Contractor, after giving reasonable notice of intention to do so, may conduct the test.
- (f) Results of tests shall be promptly made available by each party to the other.
- (g) Costs of and incidental to testing shall be borne by the Contractor or paid by the Contractor to the Subcontractor unless:
 - (i) this Subcontract provides that the Subcontractor shall bear the costs of the test or is one which the Subcontractor was required to conduct;
 - (ii) the test shows that the material or work is not in accordance with this Subcontract;
 - (iii) the test in respect of work covered up or made inaccessible without the Contractor's prior approval; or
 - (iv) the test is consequent upon a failure of the Subcontractor to comply with a requirement of this Subcontract.
- (h) Where the costs of and incidental to testing are not to be borne by the Contractor, they shall be borne by the Subcontractor or paid by the Subcontractor to the Contractor on demand.

24. Variations

- (a) The Contractor may direct the Subcontractor to carry out a variation to the Subcontract Works by directing the Subcontractor to increase, decrease, or omit any part from the Subcontract Works; change the character or quality; alter the line, level, position or dimensions; carry out

additional works; change the nature of the works; or demolish work no longer required by the Contractor.

- (b) The items referred to above as a variation do not constitute a variation if it is determined in the sole and absolute discretion of the Contractor that the items form part of the Subcontract Works or are required to ensure that the Subcontractor complies with its obligations under the Subcontract.
- (c) The Subcontractor shall vary the work under the Subcontract as required by the Contractor and no variation shall vitiate this contract. All variations to the Head Contract Works approved by the Superintendent under the Head Contract, including a deletion of the whole of the Head Contract Works shall be deemed permissible under the Subcontract, treated as a variation to the Subcontract and valued accordingly.
- (d) The Subcontractor must only vary the Subcontract Works after a written Direction from the Contractor expressly stating that it is a variation given under this clause.
- (e) Where reasonably possible, the price of a variation is to be agreed or determined prior to the Subcontractor carrying out the variation. However, on Direction from the Contractor, any variation to the Subcontract Works shall be promptly carried out by the Subcontractor notwithstanding that the price of the variation has not been agreed or determined.
- (f) The Subcontractor shall provide to the Contractor, with the variation price, suitable substantiation of base costs of variations which includes timesheets and original invoices for labour, plant and materials to enable assessment of variations submitted.
- (g) The price of a variation is:
 - (i) if the work involved in any variation is included in that class of works to which a price or rate appears in any schedule of quantities or bill of quantities or schedule of prices, that price or rate where deemed appropriate by the Contractor; or
 - (ii) where clause 24(g)(i) does not apply, that reasonable price agreed upon between the Subcontractor and the Contractor, or failing agreement, a fair and reasonable valuation is to be made by the Contractor.
- (h) Where any variation has been valued for the purpose of the Head Contract, the Contractor may at its discretion apply with respect to the price of the variation the value payable to the Contractor under the Head Contract less any amount the Contractor is entitled to receive under the Head Contract.
- (i) The Subcontract Sum may only be adjusted by a variation amount approved by the Contractor and the adjustment is to be included by the Subcontractor in its next progress claim after carrying out the work the subject of the variation.
- (j) The Subcontractor cannot Claim for a variation if the cost of the work is less than the amount identified in Item 19 of The Schedule. In addition, the Subcontractor cannot aggregate any variation claims, so that each variation must be claimed separately.
- (k) The Subcontractor shall notify the Contractor of all variation claims in accordance with clause 25 as a prerequisite to any entitlement to be paid under the Subcontract or at law for performing the variation to the Subcontract Works.
- (l) Without limiting clause 25, if the Subcontractor considers that any Direction from the Contractor constitutes or may constitute a variation but the Direction is not expressly identified as such in accordance with this clause, the Subcontractor must give the Contractor notice within 2 Business Days of receiving the Direction and provide any information reasonably requested by the Contractor within the time specified by the Contractor.
- (m) The provision of a notice in accordance with the preceding subclause is a condition precedent to an adjustment to the Subcontract Sum in respect of the Direction. The Subcontractor agrees that it will not be entitled to any additional cost or expense, any adjustment to the Subcontract Sum or to Claim an EOT or to make a Claim otherwise at law in connection with the Direction if it fails to give the notice required by subclause 24(l).
- (n) Notwithstanding the above, the Subcontractor shall comply with all Directions from the Contractor immediately, which may be prior to agreeing whether an instruction has been issued under clause 24 or the value thereof.

- (o) If the Contractor directs that any work be carried out as daywork, the Subcontractor must record each day, in a manner to be approved by the Contractor, the particulars of all resources used and costs incurred by the Subcontractor in the execution of the daywork. With each payment claim under clause 31 and when the Contractor directs, the Subcontractor must provide, on an open book basis, to the Contractor these records and all time sheets, wages sheets, invoices, receipts and other vouchers and information necessary to support its Claim for daywork.
- (p) The Contractor shall determine at its discretion the amount of any adjustment to the Subcontract Sum to be paid to the Subcontractor for daywork.

25. Notification of Claims

- (a) Without limiting any other provision of the Subcontract, the Contractor shall not be liable upon any Claim, action, demand or proceeding by the Subcontractor, whether under the Subcontract or at law or in respect of or arising out of:
 - (i) a breach of contract;
 - (ii) a Direction from the Contractor (including a Direction to perform a variation);
 - (iii) an adjustment to the Subcontract Sum;
 - (iv) or otherwise;
 unless within 7 Days (or a lesser time if the Contractor is subject to a shorter timeframe under the Head Contract) after the first date upon which the Subcontractor could have been aware of the breach, Direction or entitlement to bring the Claim, action, demand or proceeding the Subcontractor has given to the Contractor the prescribed notice.
- (b) For the purposes of this clause, a prescribed notice is a notice in writing which includes full particulars of:
 - (i) the breach, Direction or circumstances on which the Claim, action, demand or proceeding is based;
 - (ii) the clause of the Subcontract or other basis for the Claim, action, demand or proceeding; and
 - (iii) the quantum of the Claim, action, demand or proceeding and the method of calculation.
- (c) If the Subcontractor does not give the Contractor the prescribed notice strictly in accordance with clause 25 in connection with a Claim, the Claim shall be barred and the Subcontractor shall have no entitlement in connection with or arising out of the Claim and forever releases the Contractor from the Claim.

26. Liability for Defects

- (a) Any defects which may appear at any time up to the expiration of the Defects Liability Period shall, upon the Direction by the Contractor be rectified by the Subcontractor at its cost within the period specified in the Direction.
- (b) Where the Subcontractor fails to comply with a Direction under this clause, the Contractor may have the defects rectified by others and subject to this Subcontract, apply the retention fund or any security held for the purpose of rectifying such defects.
- (c) Should the retention monies or security be insufficient, the Contractor may recover from the Subcontractor as a debt due from the Subcontractor to the Contractor the cost of rectifying the defects in the Subcontract Works the subject of the Direction.
- (d) Where, during the Defects Liability Period, the Contractor directs the Subcontractor to rectify a Defect or defects there will be a separate Defects Liability Period for the work the subject of the Defect or defects which shall commence on completion of rectification and extend for a further period equal to the first Defects Liability Period. The Contractor may hold the balance of the retention fund until expiration of the last Defects Liability Period.

27. Cleaning

- (a) The Subcontractor shall at its own cost and to the satisfaction of the Contractor;
 - (i) during performance and until Subcontractor Completion of the Subcontract Works or as reasonably directed by the Contractor, clean-up and properly remove from the site all rubbish and surplus material arising from the execution of the Subcontract, remove all temporary buildings, temporary works, constructional plant and equipment it may

- have constructed or brought onto the site for the purpose of carrying out the Subcontract Works and leave the site in a condition suitable for handing over to the Contractor and/or as required by following trades;
- (ii) at Subcontractor Completion of the Subcontract Works remove all temporary buildings, temporary works, constructional plant and equipment it may have constructed or brought onto the site for the purpose of carrying out the Subcontract Works, thoroughly clean-up and clear away from the site all rubbish and surplus material arising from the execution of the Subcontract Works and leave the site in a condition suitable for handing over to the Contractor and/or as required by following trades.
- (b) If the Subcontractor fails to comply with any obligation imposed on it by this clause the Contractor may, without further notice to the Subcontractor, have the work of cleaning and tidying up performed by other persons and the cost incurred by the Contractor in so doing shall be a debt due to the Contractor from the Subcontractor.

28. Contractor's Work Schedule and Subcontractor's Programme

- (a) The Subcontractor must commence and progress the Subcontract Works in a manner and at a rate of progress satisfactory to the Contractor and otherwise in accordance with the Contractor's work schedule under the Head Contract ("Contractor's work schedule") as may be amended from time to time.
- (b) The Subcontractor will, at its own cost, where necessary take all necessary steps to expedite the performance of the Subcontract Works and avoid delays in the progress of the Subcontract Works, the project and the Contractor's work schedule. The Subcontractor must carry out and complete the Subcontract Works within a sufficient time to allow the Contractor to achieve Practical Completion of the Project in accordance with the Head Contract.
- (c) The Subcontractor is to work up to 6 Days a week (Monday to Saturday) and may carry out its Subcontract Works on Sundays in order to comply with the Contractor's work schedule where it has received prior written approval from the Contractor. An approval given in accordance with this clause does not allow the Subcontractor any Claim for reimbursement of any cost, expense or loss unless it was notified under clause 25 and is a variation directed by the Contractor under clause 24.
- (d) The Subcontractor shall within 7 Days after commencement of the Subcontract Works or date of execution of the FIA, whichever is earlier, and from time to time thereafter as directed by the Contractor, supply a programme showing the dates by which or the times within which the various stages or parts of the Subcontract Works are to be executed.
- (e) Any programme provided by the Subcontractor must comply with the Contractor's work schedule which may be amended by the Contractor from time to time so that the Subcontractor is obliged to provide further programmes as required and directed to by the Contractor.
- (f) The Subcontractor must adhere to that programme unless a deviation is approved or directed by the Contractor, but is always responsible to comply with all its obligations to the timely completion of the Subcontract Works.
- (g) If any programme is not provided within the time required, the Contractor may direct in what order, by what dates or by which times the various stages or parts of the Subcontract Works shall be executed (the "timing direction").
- (h) Any Direction given by the Contractor for the Subcontractor to
 - (i) deviate from the Contractor's work schedule;
 - (ii) adhere to the timing direction,
 does not allow the Subcontractor any Claim for reimbursement of any cost, expense or loss unless it was notified under clause 25 and is a variation directed by the Contractor under clause 24.
- (i) The Subcontractor acknowledges and agrees that it:
 - (i) has notice of the period of completion of the Project and will complete the Subcontract Works within that period;
 - (ii) will carry out the Subcontract Works only during the hours agreed under the Subcontract unless the Contractor has previously approved or directed in writing otherwise;

- (iii) has reviewed the Contractor's work schedule and has satisfied itself that it can complete the Subcontract Works within the time required by it;
- (iv) will supply, at its own cost all necessary resources, including labour, plant and equipment in order to carry out the Subcontract Works in accordance with this clause; and
- (v) float in the subcontractor program is not for the sole benefit of the Subcontractor.

28A. Completion

- (a) The Subcontractor must give the Contractor written notice 28 days, and then again, 14 days, before it anticipates achieving Subcontractor Completion of the Subcontract Works.
- (b) No later than 14 days after receiving the Subcontractor's second written notice under clause 28A(a), the Contractor will inspect the Subcontract Works and,
 - (i) if:
 - A. satisfied that Subcontractor Completion of the Subcontract Works has been achieved, issue a Certificate of Subcontractor Completion to the Subcontractor:
 - 1. stating the date upon which the Contractor determines Subcontractor Completion was achieved; and
 - 2. containing a list of any Defects (including minor defects of the type described in paragraph (a) of the definition of Subcontractor Completion in clause 58); or
 - B. not satisfied that Subcontractor Completion has been achieved, issue a notice so advising the Subcontractor.
- (c) If the Contractor issues a notice under clause 28A(b)(i)(B), the Subcontractor must:
 - (i) proceed to bring the Subcontract Works to Subcontractor Completion as reasonably required by the Contractor; and
 - (ii) when it considers it has achieved Subcontractor Completion, give the Contractor written notice to that effect (after which clause 28A(b) will reapply).
- (d) If at any time a notice required to be given by the Subcontractor to the Contractor under clause 28A(a) or 28A(b) is not given by the Subcontractor yet the Contractor is of the opinion that Subcontractor Completion of the Subcontract Works has been achieved, the Contractor may issue a Certificate of Subcontractor Completion under clause 28A(b)(i)(A) for the Subcontract Works.
- (e) Upon the issue of a Certificate of Subcontractor Completion, the Subcontractor must hand over the Subcontract Works to the Contractor and correct all Defects (including minor defects) listed in the Certificate of Subcontractor Completion as soon as possible and in a manner that causes as little disruption as possible.
- (f) The Certificate of Subcontractor Completion will not:
 - (i) constitute approval by the Contractor of the Subcontractor's performance of its obligations under this Subcontract;
 - (ii) be taken as an admission or evidence that the Subcontract Works comply with the Subcontract; or
 - (iii) prejudice any rights or powers of the Contractor.
- (g) The Contractor and the Subcontractor agree that:
 - (i) the date on which the Certificate of Subcontractor Completion is issued shall not inform, nor affect, the Date of Subcontractor Completion; and
 - (ii) the Subcontractor is not entitled to an Extension of Time under clause 29 or any other Claim arising out of or related to the fact that the date on which the Certificate of Subcontractor Completion is issued may differ from the Date of Subcontractor Completion that is certified in the Certificate of Subcontractor Completion.

28B. Liquidated Damages

- (a) If the Subcontractor fails to bring the Subcontract Works to Subcontractor Completion by the Date for Subcontractor Completion of the Subcontract Works, the Subcontractor must pay the Contractor liquidated damages at the amount specified in Item 9(a) of The Schedule until the Date of Subcontractor Completion of the Subcontract Works as determined by the Contractor.
- (b) The Subcontractor acknowledges that the amount stated in Item 9(a) of The Schedule represents the Contractor's genuine pre-estimate of the damages likely to be suffered by it if the Subcontract Works do not reach Subcontractor Completion by the Date for Subcontractor Completion of the Subcontract Works, save for any amounts that may become payable by the Contractor to the Principal under the Head Contract.
- (c) If the project does not reach Practical Completion by the Date for Subcontractor Completion (as adjusted in accordance with this Subcontract or the Contractor's work schedule) and one of the causes of such delay is any act or omission of the Subcontractor including delay by the Subcontractor in completing the Subcontract Works, the Subcontractor shall indemnify the Contractor against any Claim, loss, cost or damage incurred as a result of the delay including damages, losses, or costs payable by the Contractor to the Principal under the Head Contract in the amount stated in Item 9(b) of The Schedule or at law.

29. Delay and Extension of Time

- (a) In this clause, "qualifying delay" means a delay in the progress of the Subcontract Works that:
 - (i) results from an act, default or omission of the Contractor;
 - (ii) would entitle the Contractor to an extension of time for completion of the project under the Head Contract; and
 - (iii) is not due to, or does not arise out of, any act or omission on the part of the Subcontractor.
- (b) If the Subcontractor becomes aware of anything which will probably cause delay to Subcontract Works, the Subcontractor shall promptly and within no later than 2 Business Days after the Subcontractor became aware or ought to have become aware of the probable cause of delay, give the Contractor written notice of that cause and the estimated delay setting out:
 - (i) details of the delay or potential delay including its cause and duration;
 - (ii) how the delay or potential delay will affect the progress of any work;
 - (iii) the measures which are available to overcome the delay or potential delay; and
 - (iv) the measures which are in fact being taken to overcome the delay or potential delay.Where the effect or the cause of the delay is continuing in nature, or its duration cannot be ascertained at the time of the submission of the notice referred to in the first paragraph of this clause, the Subcontractor must provide particulars of its estimate and a written report to the Contractor in relation to the delay on a weekly basis.
- (c) The Subcontractor shall only be entitled to such extension of time for carrying out the Subcontract Works (including reaching Subcontractor Completion) as the Contractor assesses ('EOT'), if:
 - (i) the probable cause of delay has actually occurred;
 - (ii) the Subcontractor has been delayed in reaching Subcontractor Completion by a qualifying delay;
 - (iii) the Subcontractor fully complied with clause 29(b) of this Subcontract;
 - (iv) the delay has caused a delay to an activity on the critical path shown in any current Subcontractor programme;
 - (v) the delay cannot be accommodated by reconfiguring the critical path or reallocating labour or resources;
 - (vi) the Subcontractor gives the Contractor, within 7 Days of when the Subcontractor should reasonably have become aware of that causation occurring, a written Claim for an EOT which includes a clear statement (including by reference to the activities in the programme required under clause 28):
 - A. a detailed statement of the facts on which the Claim is based including the information required by the notice in clause 29(b);
 - B. how the delay involves an activity which is, or by virtue of the delay becomes, critical to the maintenance of the progress in the execution of the Subcontract Works so as to delay the Date of Subcontractor Completion;

- C. a comparison of the planned and as-executed critical path at the time when the delay occurred;
 - D. a precise identification of the activities affected and critical to the Subcontractors progress;
 - E. the number of Days claimed as an EOT; and
 - F. any other information the Contractor reasonably requires.
- (d) If further delay results from a qualifying delay evidenced in a Claim under clause 29(c)(vi), the Subcontractor shall Claim an EOT for such delay by promptly giving the Contractor a further Claim which complies with the requirements of clause 29(c)(vi).
- (e) If the Subcontractor fails to give the notices required by clause 29(b), 29(c) and 29(d) within the period required by this clause:
 - (i) the Subcontractor is not entitled to, and shall not Claim, any EOT nor to any additional payment, damages or compensation under the Subcontract or otherwise at law, nor arising out of any damages nor compensation in connection with the claimed event, or events, of delay; and
 - (ii) any principle of law or equity (including those which might otherwise entitle the Subcontractor to relief and the 'prevention principle') which might otherwise render the date for Subcontractor Completion unenforceable or render liquidated damages penal shall not apply.
- (f) The Contractor will inform the Subcontractor within twenty-eight (28) Days of receiving a Claim for an EOT ("advice on EOT"):
 - (i) whether or not the Contractor has granted any extension of time; and
 - (ii) if no advice on EOT is given, then it is deemed rejected.
- (g) The Subcontractor's strict compliance with the provisions of this clause is a precondition to any right of the Subcontractor to an EOT.
- (h) The Subcontractor must provide evidence of any events that are alleged to have caused a delay, including the actions or inactions of the Contractor or other events beyond its control, and to demonstrate that the delay affected the construction critical path and that it delayed Subcontractor Completion of the Subcontract Works.
- (i) Without limiting clause 29(c), the Subcontractor must show cause as to how the delay occurred to an activity or activities on the construction critical path of the then current Construction Programme. The Subcontractor agrees this is a precondition of its entitlement to an extension of time, and the Subcontractor must submit a marked up copy of the current Construction Programme with the notice of Claim showing how the Subcontractor has been, or will be, delayed in completing the Subcontract Works.
- (j) The Subcontractor must submit a revised project programme each time the Subcontract Works are delayed by 7 Days or more in total or in aggregate or an extension of time is granted.
- (k) Notwithstanding that the Subcontractor is not entitled to or has not claimed an extension of time, the Contractor may at any time and from time to time by notice in writing to the Subcontractor extend the time for Subcontractor Completion for any reason in the Contractor's sole and absolute discretion and without being under any obligation to do so. Further, the preceding sentence operates for the sole benefit of the Contractor.
- (l) Any EOT granted by the Contractor does not entitle the Subcontractor to:
 - (i) an increase in the Subcontract Sum;
 - (ii) give rise to any liability for delay costs or delay damages arising out of or in connection with the delay;
 - (iii) set time at large in respect of the Subcontractor;
 - (iv) vitiate the Subcontract.
- (m) The Subcontractor acknowledges that it has made an allowance for any potential delay costs or delay damages in the Subcontract Sum. The Subcontractor is not entitled to, and shall not Claim, any additional payment, damages or compensation under the Subcontract or otherwise at law in respect of delay, nor arising out of any damages nor compensation in connection with any EOT.

30. Acceleration

- (a) Whether or not the Subcontractor is entitled to an EOT under clause 29, the Contractor may direct the Subcontractor to accelerate the execution of the Subcontract Works or to recover a delay in the execution of the Subcontract Works (the "acceleration direction") provided that, the Contractor's Direction must:
- (i) be in writing and signed by the Contractor;
 - (ii) contain details of the work to be accelerated and the time by which the accelerated work is to be completed;
 - (iii) expressly state that it is an acceleration direction given under this clause; and
 - (iv) be provided only if the delay in the Subcontract Works does not arise out of, or is not in connection to, any act, default or omission of the Subcontractor in the performance of its Subcontract Works.
- (b) The Subcontractor must take steps, measures and calculations that are necessary to comply with the acceleration direction, including the rescheduling, redeployment and employment of workers, plant, equipment and other resources.
- (c) If an acceleration direction under this clause is necessary due to or in connection with:
- (i) delay by the Subcontractor in the execution of the Subcontract Works; or
 - (ii) a failure by the Subcontractor to progress the Subcontract Works in accordance with the Contractor's work schedule; or
 - (iii) a departure by the Subcontractor from the Subcontractor's programme,
- the Subcontractor shall not be entitled to, and shall not Claim, an EOT, any additional payment, damages or compensation under the Subcontract or otherwise at law in respect of the acceleration direction.
- (d) Where the Subcontractor fails to comply with an acceleration direction under this clause that is necessary due to or in connection with the matters identified in subclause (c)(i) to (iii), the Contractor may engage separate subcontractors to perform the Subcontract Works concurrently with the Subcontractor and all costs incurred in doing so shall be a debt due from the Subcontractor to the Contractor. The Contractor may apply the retention fund or any security held by the Contractor for the purpose of meeting the costs of the separate subcontractors or separate contractors.
- (e) The Subcontractor will be entitled to be paid an amount as agreed in writing between the Contractor and the Subcontractor for its additional direct costs properly and reasonably incurred as a result of the acceleration direction. However, the Subcontractor is only entitled to be paid the costs of complying with this clause 30 where the event or circumstance causing the delay is otherwise beyond the reasonable control of the Subcontractor.
- (f) Notwithstanding subclause (e), the Subcontractor must claim in accordance with clause 25 or otherwise will be barred from making a claim.
- (g) The Contractor's rights to claim liquidated damages or an indemnity under clause 28 are not affected by the acceleration direction.

31. Payment

- (a) On the date stated in Item 14 of The Schedule only (no earlier or later), and only once per month prior to Subcontractor Completion of the Subcontract Works (monthly "reference dates" and the right to Claim on a monthly basis cease at Subcontractor Completion or termination), the Subcontractor must give a progress claim to the Contractor by giving notice of the claim strictly in accordance with clause 40 and in the format set out in **Annexure 1** or in any other format which the Contractor reasonably requires:
- (i) stating the value of the Subcontract Works carried out by the Subcontractor to the date stated in Item 14 of The Schedule (the "reference date"); and
 - (ii) including a schedule of variations stating the variations directed by the Contractor under clause 24 to the date stated in Item 14 of The Schedule (providing the Subcontractor has complied with clause 25 in relation to each variation claimed) together with:
 - A. the description of the work directed to be carried out under each variation;
 - B. any prices that have been agreed or valued in accordance with clause 24; and
 - C. the prices that have not been agreed or valued (the "variations not agreed");

- (iii) including signed statutory declarations, in the form required by the Contractor and attached to the Subcontract Documents, to evidence that the Subcontractor has complied with its obligations to the date of the progress claim in that the Subcontractor:
 - A. has paid all of the Subcontractor's subcontractors, suppliers and employees all amounts due at law in respect of the Subcontract Works;
 - B. has paid all superannuation, redundancy payments or other statutory fund contributions, to which should be attached any relevant receipts;
 - C. has claimed for all work carried out by the Subcontractor up to the date of the progress claim in accordance with the Subcontract;
 - D. has effected and continues to have any required insurance cover under the Subcontract, to which should be attached any relevant insurance Documents unless previously provided;
 - (iv) including any reasonable further information from the Subcontractor in respect of any progress claim. The Subcontractor must provide the information requested to the Contractor within the time and in the form requested by the Contractor before the Contractor is required to assess any progress claim.
- (b) The amount payable to the Subcontractor in respect of each progress claim is the Contractor's assessment of:
- (i) the value of the Subcontract Works (excluding variations) carried out by the Subcontractor and claimed to the reference date for this progress claim;
 - (ii) the value of any variations to the Subcontract Works carried out by the Subcontractor and claimed to the reference date for this progress claim which increase the Subcontract Sum and have been previously approved or valued in writing by the Contractor in accordance with clause 24;
- less
- (iii) the total amount already paid under the Subcontract to the Subcontractor by the Contractor, which may include:
 - A. any amount which has become payable to the Subcontractor by reason of the Act;
 - B. any amount which has been the subject of an adjudication under the Act;
 - C. any amount in respect of which security has been given under the Act; and/or
 - D. any amount which has been the subject of a debt certificate within the meaning of the Act.
 - (iv) the value of any variations which decrease the Subcontract Sum and have been previously approved or valued in writing by the Contractor under clause 24;
 - (v) any amount which the Contractor may withhold, retain or deduct in accordance with the Subcontract or otherwise, including retentions under clause 33;
 - (vi) any other amount asserted or claimed by the Contractor under clause 56;
 - (vii) where any part of the Subcontract Works is Defective, the estimated cost of remedying the Defective work.
- (c) In determining the amount payable to the Subcontractor in respect of each progress claim the assessment is to exclude any amount:
- (i) for work performed by the Subcontractor after the reference date for this progress claim;
 - (ii) which comprises a Claim for damages by the Subcontractor;
 - (iii) any amount claimed by the Subcontractor that had not been earlier notified under clause 25.
 - (iv) for variations not agreed.
- (d) No amount is payable to the Subcontractor and there will be no reference date for that month in respect of any progress claim unless:
- (i) the Subcontractor has returned an unamended executed FIA to the Contractor;
 - (ii) the Subcontractor has strictly complied with clause 31(a).

The next reference date will be the day specified in Item 14 of the Schedule of a subsequent month in which the Subcontractor does give the Contractor a progress claim strictly in accordance with clause 31(a).

- (e) The Contractor is to pay the amount payable to the Subcontractor in accordance with the clause within the time for payment set out in Item 15 of The Schedule. Payment other than payment of the Subcontractor's final progress claim shall not be evidence of the value of Subcontract

Works or an admission of liability or evidence that the Subcontract Works has been executed satisfactorily but shall be a payment on account only.

- (f) The Subcontractor is to submit its final progress claim within 21 Days after Practical Completion of the Project or within such other time as is requested by the Contractor in writing. The final progress claim is to be endorsed "Final Progress Claim" and is to include:
 - (i) a final statement setting out the details of all monies claimed or owed under this Subcontract or in connection with the subject matter of this subcontract; and
 - (ii) a release by the Subcontractor, in the written form provided by the Contractor, and attached to the Subcontract Documents (the "Final Release") in respect of all claims on any account whatsoever that the Subcontractor may have against the Contractor under this Subcontract or in connection with the subject matter of the Subcontract, which are not contained in the final statement.
- (g) With the strict exception of a claim to return its retention fund and other securities within 21 Days of the expiry of the last Defects Liability Period, following the expiration of the time for submitting the Subcontractor's final progress claim, any Claim that the Subcontractor could have made against the Contractor and has not made shall be barred. For the avoidance of any doubt, the Subcontractor is expressly not entitled to make a progress claim after Subcontractor Completion of its Subcontract Works and prior to submission of its "Final Progress Claim" and further after its submission of its Final Progress Claim and before its claim for the return of the retention fund and other securities within 21 Days of the expiration of the last Defects Liability Period.
- (h) As a condition precedent to receiving payment in respect of the final progress claim, the Subcontractor must:
 - (i) execute the Final Release;
 - (ii) provide all warranties, as-built manuals, drawings, training and spare materials as required by the Subcontract or referred to in the specification.
- (i) Payment by the Contractor, at any time, where the Subcontractor has not complied with clause 31(a) to (d) does not preclude, or operate as a waiver, of the Contractor's rights to rely on clause 31 in respect of any other future progress claim, nor does it preclude, or operate as a waiver of the exercise and enforcement of any other right, power or remedy provided by law or under this Subcontract.
- (j) The Contractor shall not be liable to pay for unfixed plant and materials unless the Contractor agrees to make a payment for unfixed plant and materials and the Subcontractor:
 - (i) provides additional security equal to the value of the unfixed plant and materials;
 - (ii) satisfies the Contractor that the subject plant and materials have been paid for, properly stored and protected and labelled the property of the Contractor;
 - (iii) provides evidence that the plant and materials are insured; and
 - (iv) issues the Contractor with a schedule describing what materials have been paid for and the address where the materials are stored.
- (k) The Subcontractor remains responsible for the care of unfixed plant and materials.

32. Payment of Employees and Working Hours

- (a) The Subcontractor shall ensure that all persons engaged on the work under this Subcontract are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be or become entitled by virtue of any statute, award, registered agreement, determination, judgement, order of any competent court, board, commission or other industrial tribunal in force from time to time.
- (b) If any wages and/or allowances become payable but remain unpaid by the Subcontractor the Contractor may withhold from the Subcontractor an amount sufficient to satisfy such unpaid wages and/or allowances until the Subcontractor shall provide adequate evidence of payment, failing which the Contractor may make direct payment and account to the Subcontractor for the same as a debt due and owing.
- (c) No part of the Subcontract Works shall be executed on site outside the Contractor's normal working hours other than by arrangement with the Contractor in which case the Subcontractor may be required at the Contractor's discretion to meet any additional cost of supervision incurred by the Contractor as a debt due and owing.

- (d) In the event of the Subcontractor not maintaining a rate of progress which will enable it to complete the Subcontract Works by the date for Subcontractor Completion described in Item 13 of the Schedule or within any extended time granted pursuant to clause 29, the Contractor may direct the Subcontractor to work overtime in order to meet the Subcontractor's obligations and in such circumstances the Contractor shall not be liable for any additional costs incurred by or on behalf of the Subcontractor.
- (e) If in the interests of the safety of the Subcontract Works or to protect life or property the Subcontractor deems it necessary to carry out work without prior approval of the Contractor outside normal working hours or working days in accordance with the provisions of the Subcontract, the Subcontractor shall notify the Contractor in writing of the said circumstances as soon as practicable.
- (f) For the purpose of this Subcontract a working week shall be Monday to Saturday inclusive subject to the local authority requirements applicable at the site.
- (g) The Contractor may include in any deduction under this clause an Administration Charge for its administration costs.

33. Retention Fund or Security

- (a) Subject to this Subcontract, the Contractor may deduct and retain the percentage set out in Item 16 of The Schedule from any progress payment to the Subcontractor and the total amount retained from all progress payments shall constitute the retention fund.
- (b) Where stated in Item 16 of The Schedule, the Subcontractor must provide the Contractor with additional security, both in the form and provided by the financial institution approved of in writing by the Contractor. The amount of the additional security is that stated in Item 16 of The Schedule. The additional security is to be lodged with the Contractor prior to the Subcontractor commencing the Subcontract Works.
- (c) The retention fund, and any additional security provided by the Subcontractor under clause 33(b), shall secure the Subcontractor's performance of its obligations under this Subcontract, including its obligations to rectify any defects in the Subcontract Works.
- (d) Prior to Subcontractor Completion, the total of:
 - (i) the retention fund; and
 - (ii) any additional security provided by the Subcontractor under clause 33(b);
 shall not exceed 5% of the Subcontract Sum unless section 67L(2) of the QBCC Act applies.
- (e) On Subcontractor Completion of the Subcontract Works or the issuing of a Certificate of Classification, whichever is later, the Contractor must, on the Subcontractor's written request, release to the Subcontractor that part of the retention fund, together with any additional security provided under this clause, in excess of 2.5% of the Subcontract Sum unless section 67N(2) of the QBCC Act applies, subject to:
 - (i) the Contractor may retain and withhold security or any part thereof in the event that it has or asserts to have an accrued right to call on any retention monies or additional security provided under this clause; and
 - (ii) the Subcontractor must execute and delivered the Final Release before requesting security be returned under this clause.
- (f) The Contractor may hold the balance of the retention fund, and any additional security provided under this clause, until expiration of the last Defects Liability Period; or 30 Days after the issue of the Final Certificate under the Head Contract; or 90 Days after the Subcontractor has submitted its claim for the return of the retention fund and other securities or until 21 days after the resolution of any dispute between the Contractor and the Subcontractor under or in connection with the Subcontract, whichever is later.
- (g) The Contractor is entitled to any interest that may be earned on the retention fund.

34. Use of Retention Fund or Security

- (a) The Contractor may, without prior notice, recover from the retention fund, use any security provided by the Subcontractor under clause 33 or otherwise set-off from an amount due to the Subcontractor any amount to make payment in respect of:

- (i) any debt or other amount due, claimed or certified by the Contractor to be due from the Subcontractor to the Contractor;
 - (ii) any Claim to payment (liquidated or otherwise) which the Contractor may have against the Subcontractor whether for damages or otherwise; or
 - (iii) any entitlement or asserted entitlement to be paid money by the Subcontractor (including by way of set off) in connection with this Subcontract or otherwise at law;
 - (iv) the Contractor asserting that the Subcontractor is in breach of any of its obligations in connection with this Subcontract (whether or not the financial consequences to the Contractor of any such breach have been ascertained) in all such cases as if the security were a sum of money due or to become due to the Contractor by the Subcontractor,
- under this Subcontract or at law relating to the Subcontract Works or otherwise under any other contract or agreement between the Contractor and Subcontractor.
- (b) The Contractor may include in any deduction under this clause an Administration Charge for its administration of the deduction.
 - (c) This Clause 34 will survive termination of the Subcontract.

35. Not used

36. Indemnities

- (a) The Subcontractor must rectify any damage to property, including property on or in the vicinity of the Subcontract Works (the "damage") caused or contributed to by the Subcontractor or its sub-Subcontractors, employees and agents.
- (b) The Subcontractor shall continually indemnify the Contractor against any Claim, action, demand, damage, loss (including consequential loss), liability, cost, fine, charge, penalty or expense (including legal costs on a full indemnity basis) which the Contractor pays, suffers, incurs or is liable for arising directly or indirectly out of or in connection with:
 - (i) breach of this Subcontract;
 - (ii) any act, default or omission of the Subcontractor, a consultant, a Subcontractor or the employees or agents of any of them;
 - (iii) loss or damage to property, including existing property on or around the Subcontract Works and the Project; and
 - (iv) claims by any person in respect of personal injury or death or loss of, or damage to, any property;
 whatsoever, arising out of, or as a consequence of, the carrying out of the Subcontract Works by the Subcontractor.
- (c) In the event that the Subcontractor fails to rectify the damage the Contractor may have the damage rectified and Claim the costs as a debt due and payable by the Subcontractor.

37. Subcontractor's Insurance Obligations

- (a) The Subcontractor must effect and maintain the following insurance cover for the duration of its Subcontract Works:
 - (i) public and products liability insurance in respect of third party personal injury or property damage to an amount not less than that stated in The Schedule per occurrence;
 - (ii) in respect of motor vehicles, plant and equipment, any required statutory insurance including compulsory third party insurance where required;
 - (iii) in respect of its employees, Work Cover or any similar insurance required by law;
 - (iv) in respect of claims for breach of professional duty, professional indemnity insurance for an amount not less than that stated in Item 18 of The Schedule per occurrence.
- (b) The Subcontractor must ensure that all secondary subcontractors have insured against liability for death of, or injury to, themselves or their workers including liability under statute and at law.
- (c) The Subcontractor must ensure that all plant and equipment for use in respect of the Subcontract Works is registered in accordance with all applicable legislation.

37A. Contractor's Insurance Obligations

- (a) The Contractor will effect and maintain the Contractor's Insurance specified in Item 18A of The Schedule and if reasonably requested by the Subcontractor, shall provide the Subcontractor with evidence that the policy is current.
- (b) The Contractor's Insurance is subject to the exclusions, conditions and excesses noted on the Contractor's Insurance policies and the Subcontractor must:
 - (i) satisfy itself of the nature and extent of the Contractor's insurance;
 - (ii) take out insurance to insure any risks not insured by the Contractor's insurance (in addition to the insurance cover required by clause 37); and
 - (iii) where it bears the risk of or in any way causes or contributes to:
 - A. loss of or damage to the Subcontract Works or any works under the Head Contract;
 - B. loss of or damage to unfixed goods and materials (whether on or off site), including anything provided by the Contractor to the Subcontractor or brought onto site by a sub-subcontractor, used or to be used in the carrying out of the Subcontract Works, until a Certificate of Subcontractor Completion is issued for the Subcontract Works; and
 - C. loss arising from death, personal injury and third party property damage, be responsible for paying on behalf of the Contractor and shall bear the cost of any Deductible in the Contractor's Insurance.
- (c) If the Subcontractor fails to pay the Deductible, the Contractor may:
 - (i) pay the cost of the Deductible on behalf of the Subcontractor and such amount will immediately become a debt due and payable from the Subcontractor to the Contractor; and
 - (ii) deduct from moneys otherwise due to the Subcontractor or from security held under the subcontract in accordance with clause 21, the amount of the Deductible.

38. Evidence of Insurances

- (a) The Subcontractor must provide satisfactory evidence to the Contractor that:
 - (i) any required insurance cover has been effected (including copies of the certificate of currency, and, if required, the policy of insurance) within 7 Days after commencement on site or after the Subcontractor signs the FIA, whichever is the earlier; and
 - (ii) as required in clause 31 and if and when called upon produce evidence satisfactory to the Contractor that all such insurances are current; and
 - (iii) it is the Subcontractor's responsibility to provide updated insurance particulars to the Contractor within fourteen (14) Days of the date/s of expiry as outlined in Item 18 of The Schedule.

The Contractor may withhold payment of any amount due to the Subcontractor until the Subcontractor complies with this clause.

- (b) It will be a breach of this Subcontract for the Subcontractor to fail to keep all required policies of insurance current and if the Subcontractor fails to do so the Contractor may arrange for the relevant policy to be effected and the cost is a debt due from the Subcontractor to the Contractor.

39. Insurance Notices

Any policy of insurance, other than Work Cover, effected in accordance with this Subcontract, shall:

- (a) be effected prior to commencement and maintained until expiry of the last Defects Liability Period;
- (b) include the Contractor and anyone named by the Contractor as a joint insured and include a waiver by the insurer of its subrogated rights against any of the joint insured;
- (c) contain a covenant by the insurer that it will not cancel or lapse such policy before giving the Contractor thirty (30) Days notice of its intention to do so;
- (d) provide that any notice of Claim provided by one party will be deemed to be notice on behalf of all insured parties.

40. Notices

- (a) A prescribed notice shall be deemed to have been given and received, delivered ("served") on the earliest date of actual receipt, confirmation of correct transmission of facsimile or three (3) Business Days after posting.

A prescribed notice must be served on the address of the Contractor as described in Item 7 of The Schedule to be validly effected.

For the purposes of this clause, "served" means delivery of a written prescribed notice by hand, courier, post or facsimile however not via electronic mail communication.

- (b) Notwithstanding any other provision of the Subcontract, the Subcontractor must deliver any document in respect of the Act (including a payment claim under the Act) by facsimile to the facsimile numbers shown in Item 10 of The Schedule and hand deliver a copy to the Contractor at the site.

41. Industrial Relations

- (a) The Subcontractor agrees:
 - (i) to manage all aspects of industrial relations with respect to its employees;
 - (ii) to ensure that the rates of pay and terms of employment in all relevant industrial instruments and any relevant laws, for all employees engaged by the Subcontractor, are always observed in full;
 - (iii) to ensure that any directions given by the Contractor in relation to the security of the Subcontract Works, the entry and exit of vehicles to and from the site, the delivery of materials to the site, the storage of materials at the site, the parking of vehicles at the site and all other such matters affecting the project as a whole are strictly observed.
- (b) The Contractor reserves the right to confirm compliance by sighting any of the Subcontractor's relevant Documents.
- (c) If the Contractor incurs a delay, loss or damage under the Head Contract or in carrying out the project as a result of any industrial dispute involving the Subcontractor's employees, agents or subcontractors, the Subcontractor is wholly liable for the delay and any additional cost incurred by the Subcontractor including additional wages for its workers and any loss or damage incurred by the Contractor is a debt due and owing from the Subcontractor to the Contractor.
- (d) The Subcontractor is not entitled to any payment, damages or compensation as a result of any industrial dispute and the Contractor is not liable in respect of any additional cost or delay arising out of any industrial dispute whether caused by the Subcontractor or not, on the site or any other site occupied by the Contractor or Subcontractor.
- (e) The Subcontractor acknowledges that in agreeing to the Subcontract Sum, the Subcontractor has allowed for payment to its employees in accordance with all terms stated in any applicable industrial instrument or laws. Without limitation the generality of the preceding sentence, the Subcontractor acknowledges and agrees that the Subcontract Sum includes an allowance to fully compensate the Subcontractor for all risks, costs, expenses, damages, loss or similar liabilities associated with all employment and industrial disputes, issues and matters (including any relating to safety) both on and off including:

- (i) changes to work practices including, but not limited to, any reduction in working hours per week on the site, for any reason;
 - (ii) changes, amendments or variations to State or Federal industrial awards;
 - (iii) increases in labour costs, employment related insurance premiums, superannuation, bonuses, site allowances, project specific site agreements, disability allowances, travel allowances and other like allowances;
 - (iv) increases in wages, allowances, penalties, entitlements, payments, bonuses and other like items contained in contracts of employment (both express and implied) in industrial awards (both State and Federal), State and Federal certified agreements (both registered and unregistered) or any other registered or unregistered industrial agreement binding on the Contractor or applicable to the site.
 - (v) changes to any allowances, entitlements, penalties and bonuses which may be payable or become payable in respect of the Subcontract Works.
- (f) The Subcontractor continually indemnifies the Contractor against any Claim, action, damage, loss, liability, cost, charge, expense, outgoing, or payment (including legal costs on a full indemnity basis) which the Contractor pays, suffers, incurs or is liable for either directly or indirectly arising out of or in connection with all employment and industrial relations matters, including but not limited to a breach of this clause.
- (g) The indemnity provided by the Subcontractor in this clause extends to all loss and damage that the Contractor pays, suffers, is liable for or incurs.

42. Payment of Wages

- (a) The Subcontractor must promptly pay all wages, benefits and allowances owing to its employees working on the Site, or in connection with the Subcontract Works, and is to do so strictly in accordance with all relevant industrial instruments and other statutory requirements.
- (b) If the Subcontractor fails to comply with clause 42(a), the Contractor may pay any amount to the Subcontractor's employees, or to any statutory authority acting on behalf of the Subcontractor's employees, and the cost (including an Administration Charge) will be a debt due and payable from the Subcontractor to the Contractor.

43. GST

- (a) It is agreed that the Subcontract Sum in The Schedule is exclusive of GST.
- (b) The Subcontractor must ensure that at all times during the currency of the Subcontract it is registered for GST.
- (c) Notwithstanding any other clause in the Subcontract, if, by the operation of the GST legislation, any supply made under or in connection with the Subcontract constitutes a taxable supply, then the following shall apply:
 - (i) the Recipient of the taxable supply (the Recipient) must determine and pay to the supplier of the taxable supply (the Supplier) the amount of GST required to be accounted for by the ATO in respect of the supply in addition to any amount or consideration expressed as payable elsewhere in this Subcontract.
 - (ii) unless otherwise agreed:
 - A. the Recipient can issue recipient created tax invoices (RCTI) in respect of the supplies;
 - B. where the Recipient is the Contractor, the Contractor may issue a RCTI with any payment schedule under clause 31;
 - C. the Supplier will not issue tax invoices in respect of the supplies;
 - D. the Supplier warrants that it is registered for GST when it enters into the subcontract and that it will notify the Recipient if it ceases to be registered; and
 - E. the Recipient warrants that it is registered for GST when it enters into the Subcontract and that it will notify the Supplier if it ceases to be registered; and
 - (iii) for the purpose of this Subcontract, "GST Legislation" means *the A New Tax System (Goods and Services Tax) Act 1999* (Cth) including any amendments or subsequent legislation, in conjunction with all Regulations and Rulings pertaining thereto.
- (d) This clause will survive termination or expiry of this Subcontract.

44. Building Industry Fairness (Security of Payments) Act

- (a) In this clause the terms used have the same meaning as in the Act.
- (b) The Subcontractor must, if it becomes aware that any person with whom it has a contract in respect of the Subcontract Works is entitled to suspend work pursuant to the Act, promptly notify the Contractor and provide a copy of any document in relation to the Act which the Subcontractor receives from that person.
- (c) The "reference date" in respect of this Subcontract means:
- (i) for monthly progress claims prior to Subcontractor Completion of the Subcontract Works, the date of each calendar month referred to in The Schedule for the making of progress claims where the Subcontractor has:
 - A. submitted a progress claim in accordance with clause 31(a); and
 - B. provided to the Contractor with the progress claim the information and other items required by clause 31(a);
 - (ii) for the final progress claim, the date referred to in clause 31 where the Subcontractor has:
 - A. submitted a progress claim in accordance with clause 31(f); and
 - B. provided to the Contractor with the progress claim the information and other items required by clause 31(a) and 31(f);
 - (i) for its claim for remaining retention fund and other securities, the date referred to in clause 31 where the Subcontractor has:
 - A. submitted a claim in accordance with clause 31(g); and
 - B. provided to the Contractor with the claim the information and other items required by clause 31(a), 31(f) and 31(g).
- (d) For the avoidance of doubt, monthly "reference dates" cease at Subcontractor Completion and where the Subcontract is terminated, one further "reference date" only accrues on the date that is 5 Business Days following the date of termination.
- (e) Subject to the Subcontract, the amount (if any) set out in a payment schedule as the amount of payment which the Contractor proposes to make to the Subcontractor is, for the purposes of the Act, the amount of the progress payment calculated in accordance with the Subcontract which the Subcontractor is entitled to be paid under the Subcontract.
- (f) Failure to set out in a payment schedule an amount which the Contractor is entitled to retain, deduct, withhold or set-off does not prejudice the Contractor's right to subsequently exercise a right to retain, deduct withhold or set off any amount in a later payment schedule or otherwise. The Contractor may at any time, correct any error or omission in any previous payment schedule in a subsequent payment schedule.
- (g) If the Subcontractor suspends the whole or any part of the Subcontract Works pursuant to the Act:
- (i) the suspension shall not of itself affect the Date for Subcontractor Completion;
 - (ii) the Contractor shall not be liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Subcontractor as a result of the suspension;
 - (iii) the Contractor may direct the Subcontractor to omit the whole or part of the suspended work from the Subcontract Works as a variation under clause 24 and thereafter the Contractor may engage others to carry out the suspended work;
 - (iv) the Contractor may end the Subcontract by written notice to the Subcontractor.
- (h) If the Contractor becomes aware that any person with whom the Subcontractor has a contract or other arrangement in respect of the Subcontract Works is entitled to suspend work pursuant to the Act, the Contractor may pay the person such money that is or may be owing to the person in respect of that work, and any amount paid by the Contractor shall be a debt due from the Subcontractor to the Contractor.
- (i) The Subcontractor shall indemnify the Contractor against all loss and damage, suffered or incurred by the Contractor arising out of a suspension pursuant to the Act by any person with whom the Subcontractor has a contract, in respect of the Subcontract Works, of work which forms part of the Subcontract Works.

45. Protection of Persons and Property

- (a) Where appropriate to the execution of the Subcontract Works the Subcontractor shall:
- (i) provide, erect and maintain all barricades, guards, fencing, temporary roadways and footpaths, signs and lightings;
 - (ii) provide and maintain all watching and traffic flagging;
- lawfully required by any public or municipal authority, or necessary for the protection of the Subcontract Works, or of other property, or for the safety and convenience of the public, and shall remove the same when no longer required.
- (b) The Subcontractor shall avoid obstruction or damage to roadways and footpaths, drains and water courses and public utility and other services on or adjacent to the site which are visible or the location of which can be ascertained by the Subcontractor from the appropriate authority or from the Subcontract Documents and shall have any obstruction removed immediately and at the Subcontractor's own cost have reinstated all damage caused by the Subcontractor, its servants or agents.
- (c) In the event of the Subcontractor's failure to reinstate damage caused by it, the Contractor shall have the right to carry out remedial works and to deduct the cost thereof from any moneys due or thereafter to become due to the Subcontractor by the Contractor under the Subcontract and to recover any deficiency then remaining as a debt due to the Contractor by the Subcontractor.
- (d) The Subcontractor shall avoid interference with or damage to property on or adjacent to the site and shall provide temporary protection for and shall repair and reinstate all damage caused by it, its servants or agents.
- (e) The Subcontractor shall prevent nuisance or inconvenience to the owners, tenants and occupiers of properties adjoining the site and to the public and shall comply in all respects with the requirements of any agreements that may be made from time to time with adjoining owners or for the protection of adjoining property, to which the Contractor may be subject and extracts from those agreements are available for inspection at the Contractor's office.

46. Urgent Protection

- (a) If urgent action is necessary to protect the Subcontract Works or other property or people and the Subcontractor fails to take such action, the Contractor may take the necessary action. If the action taken by the Contractor was action which the Subcontractor should have taken at the Subcontractor's cost, the cost incurred by the Contractor shall be a debt due from the Subcontractor.
- (b) If time permits, the Contractor shall give the Subcontractor prior written notice of the Contractor's intention to take action under this clause.

47. Provisional Sums

Where provisional sums are included in this Subcontract (whether so described as prime costs sums, prime cost items or otherwise) in respect of any materials, goods or work to be incorporated into the Subcontract Works by the Subcontractor:

- (a) Such sums shall be net and shall include the cost of packing and of carriage and delivery at the site of the project.
- (b) The Subcontractor shall in sufficient time to prevent delay being occasioned in the progress of the Subcontract Works request from the Contractor in writing all necessary directions regarding the selection and supply of the materials or goods comprising provisional sums and the Contractor shall respond to any such requests promptly.
- (c) The Subcontractor shall order, obtain and take delivery of any materials or goods and shall be responsible for the storage and safe keeping of same and for any loss or damage that may occur.
- (d) The Subcontractor has deemed to have allowed all attendance costs including overheads, margin and waste within the Subcontract Sum for the provisional sums included in the Subcontract. The provision sum itself does not include such attendance costs. In adjusting the provisional sum (unless otherwise allowed for in the Head Contract):

- (i) where the value of the actual works performed for the provisional sum is less than the allowance, the Subcontract Sum will be reduced by the difference in value between the allowance and the actual value of the works together with an allowance for overheads and margin calculated in accordance with the Head Contract.
- (ii) where the actual value of the works performed for the provisional sum is greater than the allowance, the Subcontract Sum will be increased by the difference in value between provisional sum and the value of the works.

48. Cranage and Hoisting

- (a) Cranage and hoisting ("vertical lifting") may be provided by the Contractor at its cost until such date as it is removed from the Site. The Contractor is not responsible for, and the Subcontractor bears the risk of, any delays in the Subcontract Works and additional costs incurred by the Subcontractor as a result of any failure, breakdown or disturbance in respect of any lifting used for the project provided by the Contractor or other subcontractors.
- (b) The Subcontractor shall be responsible for making sure that the items to be lifted are within the lifting capacity of the Contractor's crane and those to be lifted by hoist are within the size and weight restraint of the Contractor's hoist.
- (c) The Subcontractor is deemed to have included within the Subcontract Sum all costs associated with any dismantling/breakdown and subsequent reassembly of items supplied by the Subcontractor for incorporation into the Head Contract Works which are either too heavy or large for the capacity of the crane and/or hoist provided by the Contractor.
- (d) Any cranage or hoisting items that are not provided by the Contractor and necessary for use with the Contractor's cranes and hoists in the Subcontractor's vertical lifting are to be provided by the Subcontractor and must satisfy all statutory requirements before being employed in vertical lifting.
- (e) The Subcontractor shall give sufficient notice to the Contractor prior to requiring its materials or equipment for vertical lifting. All vertical lifting times and dates shall be arranged to fit in with the then current Contractor's works schedule. Any vertical lifting carried out outside the pre-arranged times (the "additional lifting"), may be carried out by the Contractor (at its entire discretion) to ensure that the Contractor's schedule is adhered to, and all costs and damages associated with the additional lifting shall be at the Subcontractor's cost.
- (f) The Subcontractor agrees that all items involved in vertical lifting are at the risk of the Subcontractor and the Subcontractor must provide all labour for loading and unloading and ensure that all plant and materials involved in vertical lifting are taken to its place of work and not be placed where they interfere with works of the Contractor or other subcontractors.
- (g) The Subcontractor shall at its own cost supply its own cranage or hoisting if that provided by the Contractor is not suitable or sufficient for the Subcontractor's purposes in carrying out the Subcontract Works.

49. Temporary Light and Power

- (a) Temporary single-phase power may be supplied by the Contractor and will be shared by all Subcontractors on site up to the limit stipulated by the local power authority. The Subcontractor at its own cost is to provide any power required by the Subcontractor in addition to that supplied by the Contractor.
- (b) The Contractor shall provide main access lighting. The Subcontractor at its own cost shall provide any lights required in the Subcontractor's immediate work area.
- (c) It is the Subcontractor's responsibility to ensure all of the electrical equipment to be used on site by the Subcontractor during the execution of the Subcontract Works fully complies with the current construction safety legislation and all other relevant authorities. The Contractor reserves the right to have tested any item of the Subcontractor's equipment suspected of non-compliance with this clause. All costs associated with disruption to the site's electrical supply, either fully or in part, caused directly or indirectly by the Subcontractor's failure to comply with the intent of this clause will be considered as being a debt due from the Subcontractor.

50. Samples

Where samples are required to be provided by the Subcontractor for the approval of the Contractor samples in accordance with the Subcontract Documents shall be provided and once approved shall be endorsed as the "approved samples". The Contractor shall retain two of the samples, and the third is to be returned to the Subcontractor.

51. Intellectual Property

- (a) The Subcontractor warrants that the designs, materials, Documents and methods of working provided by the Subcontractor do not infringe any patent, registered design, trademark or name, copyright or other Intellectual Property right.
- (b) The Subcontractor must indemnify the Contractor in respect of any Claim against, or loss or damage incurred by the Contractor arising out of a breach of the above clause.
- (c) To the extent permitted by law, ownership of copyright in all design documentation, including drawings, specifications, models, samples and calculations, prepared by the Subcontractor for the purposes of the Subcontract Works is assigned to the Contractor upon its creation.
- (d) The Contractor grants the Subcontractor a license to use design documentation prepared by the Subcontractor or the Contractor for the purposes of the construction, alteration or repair of the Subcontract Works only.

52. Contractor's Default

- (a) If the Contractor:
 - (i) remains in serious breach of its obligations to make payment under this Subcontract after twenty-eight (28) Days written notice of such default by the Subcontractor; or
 - (ii) enters into liquidation other than a voluntary winding up by members for the purpose of reconstruction or amalgamation,

the Subcontractor may, within fourteen (14) Days of the happening of any of the above:

- (iii) give notice in writing to the Contractor requesting that the Contractor's default be rectified; and
 - (iv) state the Subcontractor's intention to determine the Subcontract if the Contractor's breach is not rectified within fourteen (14) Days.
- (b) If the Contractor fails to rectify the default within fourteen (14) Days (provided that the matter has not been submitted to dispute resolution under clause 55) the Subcontractor may, by notice in writing, at the expiration of fourteen (14) Days, determine this Subcontract.
- (c) Where applicable, the rights of the Subcontractor under this clause 52 are to be construed as being subject to and limited by Chapter 5 of the *Corporations Act 2001* (Cth).

52A. Suspension

- (a) The Contractor may, at any time, direct the Subcontractor by notice in writing to suspend all or any part of the work under the Subcontract, if the Contractor's representative is of the opinion that it is necessary:
 - (i) because of an act, omission or default of:
 - A. the Contractor, or the Contractors Representative or its employees, consultants, agents or other subcontractors (not employed by the Subcontractor);
 - B. the Subcontractor, the Subcontractor's subcontractors or consultants or employees or agents of any of them;
 - C. the Principal or the Principal's Representative under the Head Contract (if applicable);
 - (ii) because of the occurrence of a Force Majeure event;
 - (iii) for the protection or safety of any person or property; or
 - (iv) to comply with a court order.

- (b) If the Contractor suspends all or part of the work under the Subcontract as a result of any act, omission or default of the Contractor, or the Contractor's Representative or its employees, consultants, agents or other subcontractors (not employed by the Subcontractor), then:
 - (i) subject to compliance with the notice and information requirements of the Subcontract, the Contractor may be liable for any additional direct costs incurred by the Subcontractor as a result of the suspension, and;
 - (ii) subject to compliance with the notice and information requirements set out in clause 29, the Subcontractor may be entitled to an extension of time.
- (c) If the Contractor suspends all or part of the work under the Subcontract as a result of:
 - (i) any act or omission or default by the Principal or the Principal's Representative under the head Contract;
 - (ii) the need for the protection or safety of any person or property; or
 - (iii) the need to comply with a court order,
 then:
 - (iv) the Contractor has no liability to the Subcontractor for any loss, cost, expense or damage including overheads, loss of profit or standby costs; and
 - (v) subject to compliance with the notice and information requirements set out in Clause 29, the Subcontractor may be entitled to an Extension of Time.
- (d) If the Contractor suspends all or part of the work under the Subcontract as a result of any act, error, omission or default by the Subcontractor, the Subcontractor's subcontractors or consultants or employees or agents of any of them, then:
 - (i) the Contractor has no liability to the Subcontractor for any loss, cost, expense or damage including overhead, loss of profit or standby costs; and
 - (ii) the Subcontractor is not entitled to any extension of time.
- (e) The Subcontractor's entitlement to payment of additional direct costs and an Extension of Time will be the Contractor's sole liability for any suspension caused by an act, omission or default of the Contractor or the Contractor's representative.
- (f) As soon as the Contractor becomes aware that the reason for any suspension no longer exists, the Contractor may direct the Subcontractor to recommence work on all or part of the work suspended. Upon being directed by the Contractor or the Contractor's Representative to recommence all or part of the work under the Subcontract, the Subcontractor must immediately recommence the work under the Subcontract.

52B. Termination for Convenience

The Contractor may on giving five (5) Business Days written notice to the Subcontractor terminate the Subcontract at any time and for any reason whatsoever. Subject to any right of set-off the Contractor may exercise, if the Subcontract is terminated in accordance with this clause, the Contractor's liability in respect of any Claim by the Subcontractor arising out of or in connection with such termination, will be limited solely to those amounts listed in paragraphs (a) to (c) below.

If the Subcontract is terminated under this clause the Contractor shall pay to the Subcontractor:

- (a) the amount due to the Subcontractor shown in any unpaid payment schedules;
- (b) the amount certified by the Contractor for Subcontract Works carried out to the date of the termination, evidencing the amount which would have been payable had the Subcontract not been terminated and had the Subcontractor been entitled to and made a progress claim on the date of termination; and
- (c) the cost of materials reasonably ordered by the Subcontractor for Subcontract Works, which the Subcontractor cannot return or for which the order cannot be cancelled, but only if the materials become the property of the Contractor upon payment.

The Subcontractor is not entitled to any other Claim, including any Claim for the Contractor taking possession of, and use, the Design Documents (where applicable), loss of profits, costs, losses, damages or expenses suffered or incurred, other than those amounts payable under this clause.

53. Subcontractor's Default

- (a) Where the Subcontractor breaches this Subcontract in any of the following respects:
- (i) it defaults in the performance or observance of any serious condition, which includes without limitation, any matters pertaining to safety, defects, delay in properly performing the Subcontract Works or complying with the Contractor's directions;
 - (ii) it discontinues or suspends the Subcontract Works;
 - (iii) it fails to proceed with the Subcontract Works with reasonable diligence, in a competent manner, or in accordance with the Contractor's directions;
 - (iv) it fails to provide a programme under clause 28(d);
 - (v) it fails to provide a site specific workplace health and safety plan under clause 17(e);
 - (vi) it fails to comply with a written Direction from the Contractor requiring it to rectify Defective work;
 - (vii) being a natural person commits an act of bankruptcy, or present a bankruptcy petition, or a sequestration order is made against the Subcontractor, or enters into a Part IX or Part X agreement under the *Bankruptcy Act 1966* (Cth);
 - (viii) being a company, it takes or has instituted against it, any action or proceeding whether voluntary or compulsory, which has an object of which may result in a winding up of the company, other than the voluntary winding up by its members for the purpose of reconstruction or amalgamation or becomes an externally administered body corporate as that term is defined in s9 of the Corporations Act 2001 (Cth);
 - (ix) there is a material and adverse change, or a material and adverse accumulation of changes, in the financial circumstances of the Subcontractor such that the Contractor forms the opinion that the Subcontractor is insolvent or may become insolvent or is not capable of completing the Subcontract Works and the Subcontractor fails to provide the Contractor, within a reasonable time as specified by the Contractor, with sufficient financial and accounting reports certified by a qualified accountant, which demonstrates to the satisfaction of the Contractor, the Subcontractor's capacity to complete the Subcontract Works in accordance with this Subcontract;
 - (x) where applicable, it fails to properly perform the Subcontractor's Design Obligations;
 - (xi) any other material breach which in the Contractor's opinion warrants the exercise of the rights under this Clause,

then, the Contractor may upon written notice to the Subcontractor:

- (xii) take the Subcontract Works wholly or partly out of the control of the Subcontractor; or
 - (xiii) determine this Subcontract.
- (b) After exercising a right under clause 53(a), the Contractor is to complete the Subcontract Works (or such part as has been taken out of the hands of the Subcontractor) and may, without payment or compensation to the Subcontractor:
- (i) take such actions and make such arrangements as it deems proper for the completion of the Subcontract Works including employing other contractors to complete the Subcontract Works;
 - (ii) take possession of and use any materials, buildings, plant, tools, equipment and other items intended for the works or in carrying out the Subcontract Works, including items in the vicinity of the site or intended for delivery to the site, as is reasonably required for completion of the Subcontract Works; and
 - (iii) where applicable, take possession of and use, the Design Documents and other documents, information, materials and the like produced by the Subcontractor, which are reasonably required by the Contractor to facilitate completion of the Subcontract Works.
- (c) If the Contractor takes possession of anything under clause 53(b)(ii):
- (i) the Contractor is to maintain such items (subject to fair wear and tear) and, subject to clause 53(d), is to return such of them as are surplus on completion of the Subcontract Works (however, where applicable, the Subcontractor has no such rights in respect of the Design Documents); and
 - (ii) the Subcontractor shall indemnify the Contractor and pay the Contractor on demand any reasonable costs incurred by the Contractor (including hiring costs) in using such items under clause 53(b)(ii).

- (d) If the Subcontract Works is taken out of the hands of the Subcontractor under clause 53(a) the Contractor shall calculate the cost incurred or estimated to be incurred, and the losses suffered or estimated to be suffered, by the Contractor to complete the Subcontract Works and shall issue a certificate to the Subcontractor certifying:
 - (i) the amount of those costs and losses;
 - (ii) the estimated amount which would otherwise have been paid to the Subcontractor if the Subcontract Works had been completed by the Subcontractor; and
 - (iii) the difference.
- (e) If the costs and damages suffered as a result of the Subcontractor's breach or the Contractor completing the Subcontract Works is more or less than any amount estimated under clause 53(d), the difference shall be a debt due and payable from either the Subcontractor or the Contractor (as the case may be).
- (f) If the Subcontractor is indebted to the Contractor, the costs shall be deducted from the amount which would otherwise have become payable to the Subcontractor if the work had been completed by the Subcontractor and the Contractor may retain the items taken under clause 53(b)(ii) until the debt is satisfied. If after reasonable notice, the Subcontractor fails to pay the debt, the Contractor may sell the items taken and apply the proceeds together with its reasonable administrative costs to the satisfaction of the debt and the costs of sale. The Subcontractor is to do all that is necessary to effect the transfer of any lease of items under clause 53(b)(ii) to the Contractor. Any excess is to be paid to the Subcontractor.
- (g) Where applicable, the rights of the Contractor under this clause 53 are to be construed as being subject to and limited by Chapter 5 of the *Corporations Act 2001* (Cth).

54. Determination of Head Contract

- (a) Should the Head Contract or the Contractor's employment thereunder be determined at any stage of execution and for any reason whatsoever then the Contractor by notice in writing to the Subcontractor may determine this Subcontract.
- (b) The Subcontractor shall not be entitled to Claim on account of such determination any sum in respect of loss of profit on that part of the work under the contract not executed at the date of the said notice but it shall be entitled to Claim and recover from the Contractor such sum (including profit) as may be agreed or fixed by arbitration in respect of work carried out on the site or elsewhere at the date of determination of this contract and may also recover any expenses already incurred and relating to or preparing for that part of the work under the contract not executed at the date of the said notice provided that the same is not otherwise recoverable and of no value to the Subcontractor.

55. Dispute Resolution

- (a) In the event of any dispute between the Subcontractor and the Contractor, either:
 - (i) during the progress of the Subcontract Works; or
 - (ii) after any breach, determination, abandonment or end of this Subcontract

As to the construction of this subcontract, or as to any matter or thing in connection with the subject matter of this subcontract (a "Dispute"), either party shall give to the other a written notice of dispute adequately identifying and providing details of the dispute and the relief sought. The dispute is to be resolved in accordance with the procedure in clause 55.

- (b) The giving of the notice of dispute is a precondition to the taking of any proceedings in a court, tribunal or adjudication under the Act and the contents of the notice are binding upon the party giving the notice in any subsequent proceedings.
- (c) Within five (5) Business Days after receiving a notice of dispute the director, or their duly authorised representatives, of both parties are to meet and attempt to resolve the Dispute.
- (d) Subject to clause 55(c), if the dispute has not been resolved within 28 Days after giving the notice of dispute, the dispute is to be referred to mediation.

- (e) The mediator shall be a person agreed upon by the parties or failing such agreement, the nominee of the President of the Queensland Law Society.
- (f) The costs of the mediation are to be shared equally between the parties.
- (g) If the mediation fails to resolve the dispute, then the dispute may be referred to litigation.
Nothing in the clause prejudices:
 - (i) either party's right to institute proceedings to seek injunctive or urgent declaratory relief;
 - (ii) the Contractor's rights under clause 34.

56. General Right of Set Off

Without limiting the Contractor's rights under any other provision in this Subcontract, the Contractor may deduct from any moneys payable to the Subcontractor:

- (a) any sum which the Contractor and its related entities asserts is payable by the Subcontractor and its related entities to the Contractor and its related entities, whether or not the Contractor's or the Contractor's related entities' Claim arises by way of damages, debt, restitution or otherwise arising out of the Subcontract; or
- (b) any sum which the Contractor and its related entities asserts is payable by the Subcontractor and its related entities to the Contractor and its related entities where the Contractor's or the Contractor's related entities' claim arises out of any other Subcontract or which is independent of the Subcontract.
- (c) The rights of the Contractor in clause 56(a) & 56(b) are in addition to and not in limitation of any other rights which the Contractor or its related entities may have to set-off, counterclaim or withhold payment of the Subcontractor under this Subcontract or any other agreement between the parties and their related entities.
- (d) For the purposes of clause 56, "related entities" means an entity's subsidiaries, related bodies corporate or associated entities under the meaning given to each of those terms under the *Corporations Act 2001*.
- (e) This Clause 56 will survive termination of the Subcontract.

56A. QBCC Licence

The Subcontractor shall not carry out any Subcontract Works which requires a licence under the QBCC Act unless it holds a licence permitting the Subcontractor to lawfully carry out that work.

If the Subcontractor is unable to carry out any Subcontract Works which requires a licence under the QBCC Act because it has failed, refused or been unable to obtain a licence or has had its licence suspended or cancelled, or has had conditions imposed on its licence, the Subcontractor shall be in serious or substantial breach of the Subcontract.

56B. Building Code 2016 and Queensland Guidelines

- (a) The Subcontractor shall comply with the Building Code 2016 (the Code), and any State Government implementation guidelines (Guidelines). Copies of the Code are available at <https://www.legislation.gov.au/Details/F2017C00668>.
- (b) Compliance with the Code and Guidelines shall not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any Defect in the Subcontract Works arising from compliance with the Code and Guidelines.
- (c) Where a change in the Subcontract is proposed and that change would affect compliance with the Code or Guidelines, the Subcontractor shall submit a report to the Contractor specifying the extent to which the Subcontractor's compliance with the Code or Guidelines will be affected.
- (d) The Subcontractor shall maintain adequate records of the compliance with the Code and Guidelines by:
 - (i) its secondary subcontractors; and

- (ii) its related entities.
- (e) The Subcontractor shall permit the Commonwealth, including a person authorised by the *Fair Work Act 2009* (Cth) and the State, full access to construction sites or places covered by the Code or Guidelines to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the project and the Subcontract Works, the subject of the Subcontract;
 - (iii) interview any person; and
 - (iv) request a party to the Subcontract to produce a specified document within a specified period, being not less than 14 Days in person, by fax or by post,
 as is necessary to allow validation of its progress in complying with the Code or Guidelines.
- (f) The Subcontractor agrees to require that its secondary subcontractors and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person authorised by the *Fair Work Act 2009* (Cth) and the State, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the project and the Subcontract Works the subject of the Subcontract;
 - (iii) interview any person; and
 - (iv) request a party to the Subcontract to produce a specified document within a specified period, being not less than 14 Days, in person, by fax or by post,
 as is necessary to allow validation of its progress in complying with the Code or Guidelines.

56C. Personal Property Securities Act (PPSA)

- (a) For the purposes of this clause:
 - (i) “the Contractor’s personal property” means all personal property the subject of a security interest granted under this Subcontract; and
 - (ii) words and phrases used in this clause that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- (b) If the Contractor determines that this Subcontract (or a transaction in connection with it) is or contains a security interest, the Subcontractor must do anything (including agreeing to amendments to this Subcontract or any other document, executing any new terms and conditions, obtaining consents, signing and producing Documents, getting Documents completed and signed and supplying information) which the Contractor asks and considers necessary under or as a result of the PPSA for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective and has the highest priority possible under the PPSA; and/or
 - (ii) enabling the Contractor to apply for any registration, complete any financing statement or give any notification, in connection with the security interest, including the registration of a financing statement or financing change statement; and/or
 - (iii) enabling the Contractor to exercise rights in connection with the security interest and the Subcontract.
- (c) The Contractor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

The Subcontractor shall give to the Contractor notice of registration or verification of registration of any security interest it registers on the PPSA register in connection with the Subcontract Works.

For the avoidance of doubt, any security interest in favour of the Subcontractor ceases on the issue of the Certificate of Subcontractor Completion.

The Subcontractor shall cause to be removed all data from the PPSA register it has registered or caused to be registered in connection with the Subcontract Works prior to achieving Subcontractor Completion.

The Subcontractor indemnifies the Contractor against all loss, cost, damage or expense that the Contractor suffers or incurs in connection with the registration of a security interest in connection with the Subcontract Works or the failure to remove the registered data relating to a security interest from the PPSA register.

- (d) The Subcontractor shall notify the Contractor as soon as the Subcontractor becomes aware of any of the following:
 - (i) if any personal property which does not form part of the Contractor's personal property becomes an accession to the Contractor's personal property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
 - (ii) if any of the Contractor's personal property is located or situated outside Australia; or
 - (iii) upon request by the Contractor, of the present location of the Contractor's personal property.
- (e) The Subcontractor shall not:
 - (i) create any security interest or lien over any of the Contractor's personal property whatsoever (other than security interests granted in the Contractor's favour);
 - (ii) sell, lease or dispose of its interest in the Contractor's personal property;
 - (iii) give possession of the Contractor's personal property to another person except where the Contractor expressly authorises it to do so;
 - (iv) permit any of the Contractor's personal property to become an accession to or commingled with any asset that is not part of the Subcontract Works;
 - (v) change its name without first giving the Contractor 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (f) Everything the Subcontractor is required to do under this clause is at the Subcontractor's expense.
- (g) Neither the Contractor nor the Subcontractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Subcontractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. This subclause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

57. Waiver

The Contractor and Subcontractor acknowledge and agree that none of the terms of the contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Contractor in each instance.

57A. Acknowledgement of Parties

The Contractor and the Subcontractor acknowledge and agree these General Conditions of Subcontract and all other documents comprising the Subcontract, have been proposed, negotiated and entered into by the Contractor and the Subcontractor on an arm's length basis and that neither party has been in a disparate bargaining position and have had a reasonable opportunity to obtain independent legal advice with respect to the negotiation of these General Conditions of Subcontract or the Subcontract as an entire agreement.

58. Interpretation and Definitions

- (a) In the interpretation of the Subcontract Documents;
 - No rule of construction shall apply to the disadvantage of one party on the basis that that party has put forward the Subcontract Documents or any of them.
 - Words importing a gender include every gender and the neutral gender (it).
 - Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
 - Headings shall not form part of this Subcontract and shall not be used in the interpretation of the Subcontract.
 - References to the words Agreement, Subcontract or Conditions of sub -contract means the terms and conditions contained in this Subcontract.

- References to legislation or regulations include any modification or re-enactment of them, and any instrument, regulations or orders issued under them
- A provision given by more than one person or party binds them jointly and severally. A provision in favour of more than one person or party is for their joint and several benefit. A reference to more than one person or party is to all or any of those persons or parties.
- A reference to a thing includes the whole or any part of that thing.
- If a word or phrase is defined, its grammatical forms have a corresponding meaning.
- Reference to a “person” or a word denoting an individual, person, firm, partnership, association (whether or not incorporated), corporation, authority, government, government agency or any other body or entity (in each case whether or not having separate legal personality), includes any of them.
- One clause does not limit the effect of another.
- This Subcontract may be executed in any number of counterparts (including facsimile counterparts). Each counterpart is deemed an original and all counterparts together constitute one instrument, which is deemed to be dated on the date the last party signs.
- A party’s rights and remedies under this Subcontract are cumulative with and not exclusive of that parties rights and remedies at law.
- Where a party executes this Subcontract in their capacity as trustee, this Subcontract is binding on that person both personally and in their capacity as trustee.

(b) In this Subcontract:

“Act” means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld)

"Administration Charge" means a charge of up to 20 per cent of the invoice cost of any costs incurred by the Contractor on behalf of the Subcontractor that may be applicable; in addition to any other costs that the Subcontractor has indemnified the Contractor for (such as, but not limited to, all in-house and external legal costs on a full indemnity basis). Where no invoices have been incurred, an administration charge per hour for internal staff time shall be applied at the Contractor’s charge-out rates.

"Building Works" has the same meaning as given to that same term in the Act.

“Business Day” are as defined under the *Acts Interpretation Act 1954* (Qld), however the definition of a business day does not include any day in the period from 22 December to 10 January inclusive of any year.

"Certificate of Classification" means when a certificate issued under the *Building Act 1975* (Qld) has been supplied in the approved form.

"Certificate of Subcontractor Completion" means a certificate from the Contractor to the Subcontractor certifying the Date of Subcontractor Completion.

“Claim” includes any claim for an increase in the Subcontract Sum, for payment of money (including damages) or for an Extension of Time at law, under contract, in equity, under statute, in tort (for negligence or otherwise including negligent misrepresentation) or for restitution

- (a) directly or indirectly, arising out of, or in connection with the Subcontract Works or the Subcontract, including any claim for a variation;
- (b) in connection with any Direction given by the Contractor; or
- (c) in connection with the Subcontract Works, the Project or the conduct of any party prior to the Subcontract.

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“Confidential Information” means all information and recordings belonging to the Contractor in whatever form and includes:

- (a) information which the Contractor indicates or has indicated is confidential or which might reasonably be considered confidential by the Contractor;
- (b) information which by its very nature might reasonably be understood to be confidential or to have been disclosed to the Subcontractor in confidence;
- (c) information which is commercially valuable or would be of commercial value to a competitor of the Contractor;
- (d) information which relates to the Contractor’s financial affairs, including performance or profitability reports and margins and the price the Contractor charges for its products and services;
- (e) information which relates to or is contained in any of the Contractor’s IT systems;
- (f) information which relates to trade secrets, Intellectual Property and intellectual property rights;
- (g) information which is found in the Contractor’s manuals or policies;
- (h) all notes and other records prepared by the Contractor or other parties, based on or incorporating information referred to in subclauses (a) to (g) above;
- (i) all copies of the information, notes and other records referred to in subclauses (a) to (h) above.

Except for information where:

- (j) the disclosure of the information is required by law or by the Subcontract; or
- (k) the disclosure is reasonably required by any persons performing their obligations under the Subcontract; or
- (l) the disclosure is to a party’s own professional advisers, or its insurer; or
- (m) the information has entered the public domain other than by a breach of the Subcontractor.

“Construction Programme” means generally the Head Contract construction programme, including any critical path document which the Subcontractor acknowledges has been provided to it by the Contractor or has been made available for inspection and review at the site office of the Contractor. The document may be amended from time to time and may be supplemented with additional information and/or Documents as required to further describe the sequencing or programme in greater detail. This document may also be referred to as the Contractor’s programme or similar.

“Contractor” means the person named in this Subcontract as Contractor and includes its authorised representatives and includes the Contractor’s project manager or nominee.

“Contractor’s Insurance” means the policy of insurances identified in Item 18A of The Schedule.

“Contractor’s project requirements” means the Contractor’s written requirements for the Subcontract Works described in Item 22 of The Schedule or inferable from the documents comprising the Subcontract which shall include, if required by Item 21 of The Schedule, the stated purpose for which the Subcontract Works are intended.

“Contractor’s Representative” means the person stated in Item 20 as the Contractor’s Representative or other person from time to time appointed in writing by the Contractor and notified to the Subcontractor as the Contractor’s Representative.

“Date for Commencement” means the date identified in Item 12 of The Schedule by which the Subcontract Works must commence on site.

“Date for Practical Completion” refers to the Head Contract and means the completion date for the Contractor’s works specified in Item 13(b) of The Schedule and as amended from time to time by the Contractor.

“Date for Subcontractor Completion” refers to the Subcontract Works and means the date listed in Item 13(a) of The Schedule or otherwise advised in writing to the Subcontractor as the date the Subcontract Works must achieve Subcontractor Completion, but if an Extension of Time is granted by the Contractor or if the Contractor determines a reduction in time for Subcontractor Completion, it means the date resulting from the Extension of Time or reduction of time.

“Date of Subcontractor Completion” means the last date that the Subcontract Works have reached Subcontractor Completion.

“Days” means calendar days.

“Deductible” means the amount of money specified in the Contractor's Insurance policy for each type of loss that the Contractor must contribute as the first payment for all claims arising out of one event or occurrence.

“Defect or Defective” includes in relation to the Subcontract Works any omission, error, fault, non-compliance, breach of law, deficiency, flaw, irregularity, material imperfection or similar condition.

“Defects Liability Period” means the period commencing on the Date of Subcontractor Completion and expiring on the date listed in Item 17 of The Schedule or as extended in respect of defects remedied within such defect liability period.

“Direction” includes agreement, approval, authorisation, certificate, communication, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, or requirement. **Directed** has a corresponding meaning.

“Documents” are the drawings, designs plans, specifications, schedules, manuals and programmes identified or referred to in the Subcontract including any updated versions of such Documents identified by the Contractor's Representative in connection with the Subcontract Works.

“Environmental Requirements” means all Legislative Requirements relating to the environment and the environmental policies and procedures of the Principal and the Contractor.

“Excusable Delay” means a delay that is an accepted delay under the Head Contract except where the occurrence is caused by an act, breach, omission or the negligence of the Subcontractor.

“Extension of Time” means an extension to the Date for Subcontractor Completion as agreed in writing to which a request for an Excusable Delay has been requested.

“Formal Instrument of Agreement” (FIA) means the document referred to in clause 7.

“Head Contract” means the contract between the Principal and the Contractor for the execution of the project, which the Subcontractor acknowledges it has had the opportunity to review.

“Intellectual Property” means all patents, trademarks, copyrights, registered designs, trade secrets, Confidential Information and other intellectual property at any time held by, or registered in the name of, a person at any time or which that person has the benefit of, has an interest in or is entitled to use.

“Latent Condition” means any physical condition or characteristic of the site and its surrounds, including below ground conditions, all natural and artificial things, asbestos, contamination and other environmentally hazardous substances, concrete cracking and spalling, facilities, utilities and services on and within the surface and, if the whole of the Subcontract Works involve work to an existing building, those things obscured behind walls, ceilings and the floors), which differ from the conditions and characteristics which should reasonably have been anticipated by an experienced and competent Subcontractor at the time of the Subcontractor's tender.

“Legislative requirement” includes;

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Subcontract Works or the particular part thereof is being carried out,
- (b) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Subcontract Works
- (c) Australian Standards and the National Code of Construction and any other referenced or relevant standards,
- (d) the applicable Codes of Practice having jurisdiction in connection with the carrying out of the Subcontract Works and other appropriate codes for the construction industry;
- (e) the requirements of service providers to which services to the site are, or are to be, connected; and,
- (f) fees and charges payable in connection with the foregoing;

"Month" means calendar month.

"Practical Completion" has the meaning attributed to it under the Head Contract.

"Principal" means the principal to the Head Contract.

"Project" means the whole of the work to be executed under the Head Contract and a brief description of which is contained in Item 4 of the Schedule.

"Project Bank Account" has the same meaning as given to that same term in the Act;

"Project Bank Account Contract" means a Head Contract to which this Subcontract is a subcontract to, insofar as it may be:

- (a) a "PBA Contract" for the purposes of the Act; or
- (b) a contract for Building Works (or other eligible works) that enlivens the operation of the Act as it relates to the operation of Project Bank Accounts.

"Quality Assurance" means all methods of work, documents, workmanship and other things which detail how the subcontractor intends to build a quality product, and includes, but is not limited to:

- (a) Quality workmanship and quality of materials reasonably expected in order to achieve the Principal's requirements as described in the Subcontract documents
- (b) Adherence to the McNab Project Quality Plan (PQP) or similar as implemented by the Contractor,
- (c) All Inspection and Test Plans,
- (d) All samples, technical data submissions, Handover Manual and Operations / Maintenance Manuals and information, and
- (e) All project quality documentation otherwise described in the project brief's and specifications
- (f) any other documentation and workmanship reasonably expected to be provided to meet the Subcontractors obligations under the Subcontract to deliver quality work to exceed the expectations of McNab and the Principal

"QBCC Act" means the *Queensland Building and Construction Commission Act 1991* (Qld).

"Site" means the land and such other places to be made available to the Subcontractor by the Contractor for the purposes of carrying out the Subcontract Works.

"Site Conditions" means the physical conditions on or below the surface of the site and includes any existing building work or work carried out by other Subcontractors to the Contractor.

"Site Information" means any information relevant to the Site that is supplied or made available to the Subcontractor by or on behalf of the Contractor whether or not the information comprises part of the Subcontract.

"Subcontract" means the agreement between the Contractor and the Subcontractor as evidenced by the Formal Instrument of Agreement.

"Subcontractor" means the person named in this Subcontract as Subcontractor and includes its employees, agents, authorised representatives and Subcontractors.

"Subcontractor Completion" means when a Certificate of Subcontractor Completion has been issued. In addition it is the stage in carrying out the Subcontract Works when:

- (a) subject to clause 26, the Subcontract Works are complete except for minor defects;
 - (i) which do not prevent the Subcontract Works from being reasonably capable of being used for their stated purpose;
 - (ii) which the Contractor determines the Subcontractor has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Subcontract Works;
- (b) those tests which are required by the Subcontract to be carried out and passed;
- (c) Documents, deliverables and other information required under the Subcontract which, in the Contractor's opinion are essential for the use, operation and maintenance of the Subcontract Works, have been supplied;
- (d) The proper and complete submission of all Quality Assurance documentation as required under the Subcontract in accordance with Clause 5.
- (e) a Certificate of Classification pursuant to the Building Code of Australia/National Code of Compliance has been supplied in respect of the Subcontract Works (if applicable);

- (f) all maintenance, operation and product manuals have been provided to the Contractor;
- (g) all warranties and certificates, Documents and other information which, in the opinion of the Contractor are essential for the use, operation and maintenance of the Subcontract Works, or any part of the Head Contract Works, have been supplied to the Contractor as required under the Subcontract, the Head Contract and at law;
- (h) written evidence that the Subcontractor has caused to be removed from the PPSA Register all data in connection with any security interest registered by the Subcontractor or a Subcontractor of the Subcontractor in connection with the Subcontract Work; and
- (i) all "as-built" or "as-constructed" drawings and other Documents required under the Subcontract have been provided to the Contractor;
- (j) any guarantee, warranty or Deed as required or requested in accordance with Cl. 10 (b); and
- (k) a fully executed (and witnessed) Deed of Release for the Subcontract Works.

"Subcontract Sum" means the sum set out in Item 5 of the schedule (which amount is exclusive of GST) as adjusted in accordance with this Subcontract including any adjustment in accordance with this Subcontract.

"Subcontract Works" means the whole of the work to be executed by the Subcontractor under this Subcontract, description of which is provided in Item 2 of the Schedule and contained in the Subcontract Documents described in Item 3 of the Schedule and includes any variation to the Subcontract Works under this Subcontract.

"Work Cover" means the insurance policy issued by Work Cover under the *Workers Compensation and Rehabilitation Act 2003* (Qld)

"Head Contract Works" means the Works as defined under the Head Contract.

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THE SCHEDULE

Item #	Description	Detail
1	Applicable Law:	Queensland
2	Subcontract Works:	Scaffold Hire
3	Subcontract Documents:	Refer to Clause 1.1 Formal Instrument of Agreement
4	Project:	Design and construction of a 150 bed residential aged care facility at Lot 90 on SP316217 Spitfire Banks Drive, Pelican Waters, Queensland 4551
5	The Subcontract Sum shall be the sum of:	<u>\$498,308.40 - Four Hundred and Ninty Eight Thousand, Three Hundred and Eight Dol-lars and Fourty Cents</u> (exclu-sive of GST).
6	Type of Contract:	Lump Sum
6A	Bill of Quantities: Schedule of Quantities:	DO NOT form part of the Subcontract DO NOT form part of the Subcontract
7	The address of the Contractor for ser-vice of Documents is:	PO Box 2304, Toowoomba, QLD, 4350 Progress claims or payment claims made under the Act or otherwise are to be faxed to (07) 4638 7376 and emailed to levi.carsburg@mcnab.net.au and accounts@mcnab.net.au
8	The address of the Subcontractor for service of Documents is:	 Progress certificates and payment schedules provided by the Contractor are to be emailed to adam@arcoastalscaffold-ing.com.au
8A	Latent Conditions (clause 13)	Alternative 1 ☒ or Alternative 2 ☐
9	9(a) Liquidated damages for the Sub-contract Works – clause 28B(a) & (b): 9(b) Liquidated damages of the Prin-cipal under the Head Contract – clause 28B(c):	\$16,000.00 per day \$8,200.00 per day
10	Facsimile no. for Contractor:	07 4638 7376 (Progress claims or payment claims made under the Act or otherwise emailed to levi.carsburg@mcnab.net.au and accounts@mcnab.net.au
11	Facsimile no. for Subcontractor:	
12	Anticipated Date for Commencement:	25/09/2022
13	13(a) Date for Subcontractor Comple-tion of the Subcontract Works: 13(b) Date for Practical Completion:	18/05/2022 04/08/23
14	Date of month for submission of pro-gress claims:	25th of the month or next business day.
15	Period/time for payment of claims:	25 Business Days

Item #	Description	Detail
16	Percentage of progress payments to be withheld and/ or form of security: Additional security:	Retention: 10 per cent to a maximum of 5 per cent of the Subcontract Sum, as adjusted
17	Defects Liability Period:	12 months from Practical Completion of the project.
18	Subcontractor's Insurances	
a	Public and Products Liability Risk Insurance:	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Cover	\$
b	Motor Vehicles, Plant & Equipment Insurance:	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Cover	\$
c	Work Cover Insurance:	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Common Law Cover	\$
d	Professional Indemnity Insurance:	
	Name of Insurer	
	Policy Number	
	Expiry Date	
	Limit of Common Law Cover	\$
18A	Contractor's Insurances	Public and Products Liability \$100,000
19	Variation lower limit:	Amend as applicable \$0.00
20	Contractors Representative	Matthew Hyams
21	Subcontractor's Design Obligations (Clause 2A)	Design Responsibility Applicable? ☐ YES ☒ NO
22	Contractor's project requirements	Refer Annexures 1, 2 & 3